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Globalization and interdependence: (a) Role of the United Nations in promoting development in the context of globalization and interdependence

An overview of the major international economic and policy challenges for equitable and inclusive sustained economic growth and sustainable development, and of the role of the United Nations in addressing these issues in the light of the New International Economic Order

Report of the Secretary-General

Summary

The present report is prepared pursuant to General Assembly resolution 64/209, entitled "Towards a New International Economic Order". It offers an overview of various dimensions of globalization, major international economic and policy changes and challenges for equitable and inclusive sustained economic growth and sustainable development. It then highlights the role of the United Nations, through various world conferences and summits, in addressing those issues and their relevance for the principles contained in the Declaration on the Establishment of a New International Economic Order and the Programme of Action on the Establishment of a New International Economic Order.

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I. Introduction

1. The world has witnessed unprecedented economic globalization over the past few decades in terms of movements of goods, finance and labour. With rapid globalization, the world has become much more interdependent. This has created tremendous opportunities for innovation as well as serious challenges in the uneven distribution of its benefits and costs. This has also heightened the risk of social, economic and environmental shocks spreading from one country to another with adverse effects and increased economic insecurity. The poorest and most vulnerable populations of developing countries, in particular, have borne the brunt of external shocks.

2. The food and fuel crises of 2007-2008 and the current global financial and economic crisis are recent examples of how problems originating in one part of the world have quickly engulfed the entire world economy and adversely affected developing countries. Thus, the transmission of shocks — through channels of reduced trade, remittances, investment and financial flows — has exacerbated inequities associated with globalization, jeopardizing development and human welfare. With aid flows also declining, the impacts have been even more devastating for low-income countries and the poor. While official development assistance (ODA) grew slightly in real terms from 2008 to 2009, it is still projected to fall well short of long agreed aid commitments.[1]

3. The challenge then is to realize the potential benefits of globalization while minimizing the considerable costs, risks and vulnerabilities that globalization has also created. In the current environment, beset by multiple crises (food, energy, climate change and financial), the challenge seems daunting.

4. Nevertheless, the global crises have also provided a rare opportunity for the international community to guide the world economy onto a path of more sustainable economic growth and recovery by simultaneously addressing the problems of food and energy insecurity, climate change and the developmental aspirations of developing countries. This goal can be achieved through inclusive multilateralism and the equitable participation of all countries, both developed and developing, as envisioned in the Declaration and the Programme of Action on the Establishment of a New International Economic Order, adopted by the General Assembly at its sixth special session in 1974 (resolutions 3201 (S-VI) and 3202 (S-VI)).

5. At a time when resources are scarce, innovative approaches to financing are needed to address the challenges of climate change mitigation and adaptation, poverty reduction and the achievement of the other internationally agreed development goals. These new methods need to be developed in a spirit of partnership, cooperation and solidarity, bearing in mind the common interests and national priorities of each country. As the main institution of inclusive multilateralism, the United Nations can play an important role in facilitating such efforts.

[1] Organization for Economic Cooperation and Development, "Development aid rose in 2009 and most donors will meet 2010 aid targets", 14 April 2010. Available from http://www.oecd.org/document/11/0,3343,en_21571361_44315115_44981579_1_1_1_1,00.html.

II. Dimensions of globalization and challenges for sustained, equitable and inclusive growth

6. Globalization means different things to different people. At least five aspects of economic globalization have had mixed effects in the developing world, including international trade, foreign direct investment, international finance, strengthened intellectual property rights, and the new international economic governance. The root causes of the recent food and energy crises and the Great Recession of 2008-2009 can be traced to aspects of globalization, but these and other challenges can also be addressed through greater inclusive multilateralism.

International trade

7. More than half a century ago, Hans Singer and Raul Prebisch at the United Nations showed how primary commodity prices had declined compared to those for manufactured goods during the first half of the twentieth century. Those trends continued in the second half of the twentieth century, especially during the 1980s, when commodity prices fell with economic growth after some gains in the preceding decade.

8. Two related trends continue to be relevant. First, there has been a greater decline in the terms of trade of tropical agricultural commodities compared to temperate ones. Second, generic manufactures have been experiencing worsening terms of trade as intense competition has resulted in "beggar-thy-neighbour" processes keeping down the prices of products from developing countries. They have good reason to be concerned about such observed long-run trends.

9. Claims of gains from trade liberalization often ignore or underestimate "transitional costs" (including employment and income losses owing to the elimination of existing industries, jobs, etc.), and seem oblivious that better new jobs have only exceptionally more than replaced jobs lost — as most trade impact modelling exercises make unrealistic assumptions of full employment, and so forth. The removal of all of the high-income countries' barriers to the merchandise exports of developing countries — including agriculture, textiles and other manufactured goods — would result in very little additional income for the exporting countries; e.g., the World Bank estimated that full trade liberalization by 2015 would add only 0.6 per cent to the gross domestic product of low- and middle-income countries.[2]

10. Contrary to widespread belief, developing countries will not be the main beneficiaries of agricultural trade liberalization by the developed countries. While most developing economies will gain from easier and greater access to the protected agricultural markets of the developed countries, the main beneficiaries will actually be from the developed agriculture-exporting countries. Although greater access to agricultural markets will benefit all agriculture-exporting economies, including some of the least developed countries, the principal beneficiaries will not be from the developing world.[3] Trade liberalization in recent decades has also made it increasingly difficult to use trade policies as an instrument of industrial policy and

[2] World Bank, *Global Economic Prospects 2002*, table 6.1.

[3] Kym Anderson, "Trade liberalization, agriculture and poverty in low-income countries". Paper presented at the Trade and Industrial Policy Strategies (TIPS) Annual Forum (September 2002). Available from www.tips.org.za.

other developmental strategies. However, almost all industrialized economies today have used trade policy instruments to develop new economic capacities and capabilities, including many in manufacturing.

Foreign direct investment

11. The debate on the pros and cons of foreign direct investment continues without any consensus, although there is little disagreement that gains from "green-field" foreign direct investment are more likely than from other types of capital inflows. However, in recent decades it has become more common to stress, if not exaggerate, the benefits of foreign direct investment in economic development, both historically and more recently.

12. The role of such foreign direct investment in the East Asian miracle was modest, accounting for less than 2 per cent of gross domestic capital formation during the high growth periods in Japan, the Republic of Korea and Taiwan, Province of China, compared to the developing country average of 5 to 6 per cent and higher shares in some south-east Asian newly industrializing countries relying on foreign direct investment. During the 1997-1998 South-East Asian economic crises, the region's industrial capabilities were much weaker because of greater reliance on and domination by foreign direct investment.

13. The *World Investment Report 1999* of the United Nations Conference on Trade and Development showed that more than 80 per cent of foreign direct investment in the world during the 1990s consisted of mergers and acquisitions — mostly acquisitions, rather than mergers — in most developing countries. Hence, most foreign direct investment is not "green-field" investment that actually creates new economic capacity. Mergers and acquisitions have mainly involved foreign acquisitions, particularly during periods of distress, especially after the ever more frequent currency and financial crises of recent times. Such "fire-sale foreign direct investment" reduces the likelihood of superior management emerging following mergers and acquisitions, as suggested by conventional economic theory.

Technology

14. Strengthened intellectual property rights in recent decades have raised the costs of acquiring technology, reducing technology transfers, raising their costs and otherwise strengthening transnational corporations' monopoly powers, with adverse consequences for development and industrialization. The World Trade Organization (WTO) Agreement has reinforced trade-related aspects of intellectual property rights (TRIPs) in ways not provided for by the World Intellectual Property Organization (WIPO), while bilateral, regional and other plurilateral trade and investment agreements have often imposed even more stringent TRIPs requirements. Consequently, incomes from intellectual property rights have greatly increased and now constitute major sources of foreign exchange earnings for technology-based corporations in some advanced industrialized countries. Member countries of WTO later agreed to substantially reduce pharmaceutical drug prices for designated essential medicines with mixed success, suggesting the possibility of a more comprehensive review and revision of the new intellectual property rights regime. However, recent developments do not give much cause for optimism despite the urgent need for such progress to address the climate change, food security and other challenges.

International finance

15. Financial liberalization, deregulation and globalization have been increasingly promoted all over the world with the growing influence of finance. At the national level, financial liberalization was supposed to improve the allocation of scarce resources and thus promote investment and growth. However, there is no unambiguous evidence of faster economic growth in countries that have pursued financial liberalization. Instead, financial liberalization has been associated with greater macroeconomic instability and rising inequalities.

16. With some exceptions, opening up the capital account has facilitated capital flight, rather than inflows, especially of a long-term nature, to develop new economic capacities. Developing countries continue to provide net financial resources to developed economies, peaking with an all-time high of $883 billion in 2008. The lost decade of the 1980s in Latin America, the lost two decades at the end of the twentieth century in Africa, and protracted stagnation in post-"shock" transition economies have accompanied financial liberalization.[4] And when capital has flowed to emerging markets, such episodes have often been temporary, and eventually reversed with devastating consequences, as in the 1997-1998 East Asian, 1998 Russian, 2000 Turkish and 2002 Argentine crises. Not surprisingly, recent International Monetary Fund (IMF) research acknowledges that financial liberalization has not ensured higher growth.[5]

17. Capital account liberalization has also not ensured significantly cheaper finance. Instead, the cost of finance rises sharply during economic downturns (forcing real interest rates to rise) and falls during booms (involving low real interest rates). More rents have accrued to finance in the economies of OECD countries in recent decades.[6] Meanwhile, financial liberalization has led to financial deepening, which has increased the levels of intermediation and corresponding claims to financial rents.

18. Capital account liberalization and financial deregulation were supposed to ensure a more stable financial system. Although financial deepening and some new financial derivatives have reduced some old sources of volatility (e.g., because of exchange or interest rate fluctuations), new sources of volatility have been created by these very same instruments. That has been exacerbated by greater "financialization", reflected, for example, by the growth of hedge funds. With growing concentration, enhanced by considerable leveraging, such risk is much more concentrated, leading to greater systemic risk, and a more volatile and unstable system. Currency, financial and capital account crises have become more frequent and greater in magnitude.[5] Far-reaching financial deregulation also facilitated an unfettered explosion of new financial instruments, such as top-rated securitized sub-prime mortgage lending, sold onto financial institutions worldwide.

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[4] United Nations Development Programme, *Human Development Report, 2003* (New York, Oxford University Press, 2003).

[5] Eswar Prasad, Kenneth Rogoff, Shang-jin Wei and M. Ayhan Kose, "The Effects of Financial Globalization on Developing Countries: Some Empirical Evidence", IMF Working Paper, 17 March 2003, International Monetary Fund, Washington, D.C.

[6] Gerald Epstein, Dorothy Power and Mathew Abrena, "Trends in the Rentier Income Share in OECD Countries, 1960-2000". Working Paper No. 58a, Political Economy Research Institute (Amherst, University of Massachusetts, 2003). Available from www.Umass.edu/peri/.

19. The interconnectedness of excessive risk-taking in financial markets with the global imbalances, vast dollar reserve accumulation (especially in parts of the developing world), volatile commodity prices and declining productive investments explains why the 2008-2009 crisis has been systemic and somewhat synchronized worldwide. For some years, the United Nations system, in various publications,[7] repeatedly warned that mounting household, public sector and financial sector indebtedness in the United States of America and elsewhere, reflected in wide global financial imbalances, would not be sustainable over time. But widespread economic growth during the middle of the past decade diverted attention away from the unsustainable bases of this seemingly strong, if unsustainable, growth. Although strong export growth and higher commodity prices benefited many developing countries, this growth pattern also led to mounting global financial imbalances and overleveraged financial institutions, businesses and households. Warnings about irrational exuberance and about the growing need to correct the global imbalances were largely ignored.

20. With the recent increased influence of finance, there has been greater pressure on governments to pursue much more deflationary and pro-cyclical macroeconomic policies. For example, "inflation targeting" has often become the norm for central banks since the 1990s. Inflation-targeting monetary policy has also constrained fiscal policy, as public borrowing is seen as inflationary. For example, in Europe, the Stability and Growth Pact has tied the hands of governments that might otherwise have used budgetary deficits to reflate their economies and create jobs. Such policies have been partly responsible for slower economic growth and job creation around the world since the 1980s.

21. Historically, the availability of long-term development finance has been crucial for development. Development in many countries like Japan, the Republic of Korea and Brazil (to name just a few) has been heavily dependent on such financial facilities. Financial liberalization has reduced — if not eliminated — such financial policies and institutions. Now, most regional development banks have reduced long-term industrial finance following the World Bank's reduction of industrial financing facilities in the 1980s. Thus, financial liberalization has been accompanied by the undermining of the few remaining institutions and instruments available for developing economies to try to catch up by deploying scarce financial resources to promote and induce desired investments.

International economic governance

22. The Bretton Woods institutions — the International Monetary Fund and the World Bank — were created in 1944 to create the conditions for sustaining peace by ensuring economic security. President Franklin D. Roosevelt believed that promotion of the economic security of all would provide the foundation for post-war political stability, domestically and internationally. Thus, United States policymakers sought to "internationalize" the New Deal and make development in poorer countries an international responsibility. In other words, the emphasis at the United Nations Monetary and Financial Conference at Bretton Woods was clearly on supporting growth, employment creation, post-war reconstruction and post-colonial development, not just monetary and financial stability.

[7] United Nations, *World Economic Situation and Prospects*; United Nations Conference on Trade and Development, *Trade and Development Report*.

progressive or even regressive, with the share of direct taxes declining compared to the generally more regressive indirect taxes. All this has been accompanied by various efforts to reduce overall tax rates. Many developing countries are engaged in tax competition to attract foreign investment. Meanwhile, lower tax revenues and increasing insistence on balanced budgets, or even fiscal surpluses, have further constrained government spending, including social expenditure, with deflationary and pro-cyclical consequences.

29. The social expenditure budget of lower-income country governments, with limited fiscal capacity, has become increasingly dependent on foreign aid. But aid volatility and lack of predictability of aid delivery have made many social programmes unsustainable as economic insecurity has risen.

30. Meanwhile, official development assistance as a share of GNP continued to decline from 0.49 per cent in 1992 to 0.29 per cent in 2001, instead of rising to the three-decades-old target of 0.7 per cent. However, the trend has been reversed since the Monterrey International Conference on Financing for Development in 2002, rising to 0.31 in 2009. Much more ODA has gone to social programmes, rather than more directly for economic development. There are also ongoing concerns over aid effectiveness, aid conditionalities, aid fragmentation, aid volatility, tied aid and other related problems.

31. There is still no conclusive evidence of the growth impact of privatization in developing countries. Most privatizations involve loss of direct employment. This is not only because there tends to be substantial overstaffing in public enterprises, but also because the new owners typically prefer to begin with fewer employees than they need to allow for greater managerial flexibility. For example, utility privatization in developing countries has had significant employment-reducing effects, sometimes affecting up to 50 per cent of the workforce.[10] This has had serious adverse implications for poverty and inequality, especially in the absence of adequate social protection and public social spending cuts.

32. Full and productive employment has not been among the targets of most macroeconomic policies of the past three decades. The conventional wisdom argued that low inflation and balanced budgets and the stability of nominal macroeconomic variables would generate rapid growth. But rapid economic growth, not to mention job growth, did not materialize in many developing countries after the achievement of low inflation, low budget deficits or even surpluses, and structural reforms.

33. Structural adjustment policies, including greater labour market flexibility, have been important elements in the current phase of economic liberalization. In the past three decades, labour market deregulation and erosion of labour standards have been advanced as a way of improving the investment environment and efficiency in resource allocation and enhancing international competitiveness. This, in turn, was supposed to spur growth and create jobs.

34. However, even during the economic expansion prior to the current global financial and economic crisis, the pace of job creation was slow. The term "jobless growth" captures the disappointing employment expansion despite reasonably high

[10] International Labour Organization, "Managing the Privatization and Restructuring of Public Utilities (Water, Gas and Electricity)" (1998). Available from http://www.ilo.org/public/english/dialogue/sector/techmeet/tmpu99/tmpure2.htm.

economic growth. Meanwhile, real wages stagnated in most countries, while executive earnings, especially in the financial sector, grew rapidly.

35. Lack of adequate social protection and counter-cyclical macroeconomic policies has exacerbated economic insecurity and adverse social impacts owing to the recent food, energy and financial crises. The fragile, slow and uneven recovery has failed to generate adequate jobs recovery.

IV. Challenges for environmental sustainability

36. The concept of "sustainable development" was first articulated by the World Commission on Environment and Development in 1987. See the "Report of the Brundtland Commission: Our Common Future". Achieving sustainable development requires reshaping trends and facilitating structural changes that will make its three pillars — economic, social and environmental — mutually reinforcing. Thus, the sustainable development challenge now facing the international community involves enhancing convergence in terms of human welfare, while reversing or checking negative tendencies like growing inequality, with a swift downward convergence in adverse environmental impacts such as ecosystem destruction and "ecological footprints". This will require fundamental changes in production and consumption, requiring human ingenuity and technological innovation to accelerate both development and sustainability.

37. This is easier said than done, as there is a fundamental tension at the core of the international economy. The globalization of production (and consumption) has presented unprecedented opportunities to developing countries to participate in global production networks. Yet, the phenomenal growth in world trade and the global economy over recent decades has not been matched by greatly enhanced capacity to manage the adverse consequences of growth for the global environment.

38. As far as it has gone, "dematerialization" and "decarbonization" in some developed countries has been made possible by shifting global patterns of production, in which resource- and energy-intensive production processes are increasingly concentrated in emerging economies and developing countries more generally, with consumption still highly — but progressively less — concentrated in the developed countries. So, on a global scale, there has been very little de-linking of the economy from the environment. Cooperative solutions are urgently needed to address the challenges posed by globalization for the Earth's carrying capacity, solutions which sustain — not reverse — economic and social progress, especially for the poor.

39. Globalization has thus changed the challenges for sustainable development by relocating production. In the high-income OECD countries, there has been a moderate reduction in energy intensity and material use per unit of GDP (relative decoupling) and absolute declines of a few pollutants. While investment in pollution control and more efficient energy conversion technologies has helped, the new international division of production — with energy- and materials-intensive industrial output growing much faster in developing than in developed countries — has resulted in little or no change in the overall dematerialization and decarbonization.

40. Despite this shift in production location, consumption patterns have not changed as dramatically, with still more of the final per capita consumption of energy- and material-intensive goods, made in developing countries, taking place in high-income countries. This change has accelerated the industrialization of developing countries, but also brought them significant new environmental challenges. Hence, for example, the complex patterns of global production specialization complicate addressing climate change issues, as the same greenhouse gas emissions into the atmosphere can be attributed to a developing country because of the location of its production or to developed country consumption.

41. There has been improvement in environmental indicators such as access to clean water and sanitation, though progress is still too slow in rural South Asia and sub-Saharan Africa. Globally, the pressure on ecosystems continues to increase, and the loss of forests and biodiversity has continued, albeit at a decelerating rate. However, safety thresholds may already have been exceeded in ecosystems, climate change and the nitrogen cycle.[11]

42. Although it is widely accepted that a rich mix of species underpins the resilience of ecosystems, little is known quantitatively about how much and what kinds of biodiversity can be lost before this resilience is undermined. The rate of species loss is estimated to be between 100 to 1,000 times what is considered to be natural, which may be between 10 to 100 times above the safety threshold. The International Union for Conservation of Nature and Natural Resources (IUCN) Red List of Threatened Species suggests that 17,291 species out of 47,677 evaluated species are under threat, including 21 per cent of mammals and 70 per cent of plants.[12] Up to 30 per cent of mammal, bird and amphibian species will be threatened with extinction this century. Marine species are under pressure from global warming, ocean acidification, pollution and overexploitation.[13] Targets set by the Convention on Biological Diversity to significantly reduce the rate of biodiversity loss by 2010 and to protect 10 per cent of the world's forests have not been met. Since most of the world's poor live in rural areas and rely on local resources for their lives and livelihoods, the rate of biodiversity loss has a direct impact on these most vulnerable populations.

43. The Rio Declaration, adopted at the United Nations Conference on Environment and Development in 1992, sought to achieve healthy and fulfilling lives for the current generation while ensuring the means to accomplish the same for future generations. No matter how uneven, growth, especially industrialization, has involved a great increase in the demand for energy. Fossil energy sources currently provide some 80 per cent of total energy needs, while energy use is responsible for 60 per cent of total greenhouse gas emissions. Carbon dioxide is the main greenhouse gas contributing to global warming. Since 1950, developed countries have contributed as much as three quarters of the increase in emissions, although they account for less than 15 per cent of the world's population.

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[11] J. Rockstrom and others, "A safe operating space for humanity", *Nature*, vol. 461, 24 September 2009, pp. 472-475.

[12] http://www.iucn.org/about/work/programmes/species/red_list??4143/Extinction-crisis-contiues-apace.

[13] United Nations Environment Programme, *UNEP Year Book 2010*. Available from http://www.unep.org/pdf/year_book_2010.pdf.

44. Emissions reductions have also been disappointing, as most developed countries have not complied with their Kyoto Protocol mitigation targets. Reducing greenhouse gas emissions will require large and interconnected investments across several sectors, with the aim, inter alia, of halting deforestation and land degradation, retrofitting buildings to make them more energy-efficient and redesigning transportation systems. But it is an energy transition that will be at the core of an alternative integrated strategy for meeting climate change and development goals. The ultimate goal of such a transition must be to improve energy efficiency and reduce reliance on fossil fuels, especially oil and coal, and to increase reliance on renewable sources of energy, especially wind, solar and advanced (non-food) biofuels.

45. Over the past three decades, the trade agenda has expanded dramatically to a wide range of issues, well beyond the traditional issues relating to trade in goods. Policy decisions regarding trade, debt, investment, structural adjustment and intellectual property rights have significant environmental dimensions. However, the environmental implications of globalization are different from the economic ones. Environmental consequences are generally longer-term, with dynamic, cumulative characteristics. They are difficult to measure because, in some cases, they relate to qualitative parameters, and many implications are not reflected in market prices, e.g., cross-border pollution, effects on global goods, extinction of species and loss of biodiversity.

46. Globalization has changed lifestyles and consumption patterns. The pressure to produce more to satisfy growing demand has increased direct environmental pressures on the resource base, as the agricultural frontier and the built environment have continued to expand to more fragile areas of greater ecological significance, and the extraction of mineral, forestry and fishery resources continues to rise. The introduction of new biological forms or even exotic ecosystems, chemical fertilizers and pesticides are also likely to lead to overexploitation and degradation of ecosystems in many poor countries where there is little effective environmental regulation.

47. Globalization has involved massive increases in extractive exports, with significant environmental impacts. There has also been rapid growth in exports from polluting industries such as iron and steel, petrochemicals, non-ferrous minerals, pulp and paper, copper and aluminium.[14] This is partly because globalization has often accelerated a "race to the bottom" in terms of tax and environmental regulations. To attract foreign investment, countries compete with one another by offering lower taxes and exemptions from environmental protection laws, with the unintended consequence of encouraging the relocation of "dirty" industries from developed countries with stricter environmental regulations to poorer countries.

48. Environmental concerns have resulted in environmental regulations. International environmental regulations are mainly of two types, seeking to either protect the supply of global public goods or incorporate environmental clauses into other international agreements. The first include multilateral environmental agreements on various issues, such as biological diversity, climate change and protection of the ozone layer, while the second include environmental regulations

[14] Industries that the World Bank categorizes as environmentally sensitive (a group of 40 industries at the three-digit level of the Standard International Trade Classification, SITC Rev.1).

associated with trade agreements. However, in contrast to the multilateral trading system, management of the international environment is weak and lacks coherence.

49. More importantly, there is no mechanism to resolve any potential conflict between the deregulatory pressure for globalization (WTO rules) and the need for appropriate market interventions for the protection of the environment, with the deregulatory pressure dominating in most cases. The pressure to sustain competitiveness, to which countries are subjected by globalization, discourages governments from taking steps to internalize environmental costs and improve environmental performance if that entails higher costs for domestic producers. There is also reluctance, especially on the part of the developing countries, towards including environmental issues in trade and integration agreements for fear that they may be used for protectionist purposes. These conflicts are potentially damaging to the environment.

V. The 1974 call for a New International Economic Order

50. At the sixth special session of the General Assembly in 1974, States Members of the United Nations solemnly proclaimed their "united determination to work urgently for the Establishment of a New International Economic Order based on equity, sovereign equality, interdependence, common interest and cooperation among all States, irrespective of their economic and social systems which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations" (resolution 3201 (S-VI)). The Declaration on the Establishment of a New International Economic Order was, in effect, a call for shared and differentiated responsibility for equitable development. Unfortunately, many aspects of the Programme of Action on the Establishment of a New International Economic Order (resolution 3202 (S-VI)) were never implemented. Instead, as documented in preceding sections, globalization, liberalization and privatization proceeded, often increasingly disadvantaging developing countries.

51. The Declaration and the Programme of Action included stabilization of commodity prices, improving the export incomes of developing countries by setting up international commodity buffer stocks, just and equitable relations among the prices of primary commodities, and manufactured goods exported and imported by developing countries (including raw materials, food, semi-manufactures and equipment). They also included measures for ensuring food security and improved access to markets in developed countries through the progressive removal of tariff and non-tariff barriers and of restrictive business practices, as well as implementation, improvement and enlargement of the Generalized System of Preferences (GSP) for exports from developing countries.

52. On international economic governance, the Programme of Action called for measures to eliminate the instability of the international monetary system, in particular the uncertainty of exchange rates, especially as it adversely affects commodity trade, for maintenance of the real value of the currency reserves of developing countries. It also called for the full and effective participation of developing countries in all decision-making in all bodies, including IMF and the World Bank, and in formulating an equitable and durable monetary system.

53. The Programme of Action also called for the adequate and orderly creation of additional liquidity for developing countries' needs through the additional allocation of special drawing rights (SDRs) in the light of the new international environment, and emphasized that any creation of international liquidity should be made through inclusive multilateral mechanisms.

54. The Programme of Action called for a review of the methods of operation of IMF, in particular of the terms for credit repayments, "stand-by" arrangements, compensatory financing and the financing of commodity buffer stocks, so as to enable developing countries to make more effective use of them.

55. The Programme of Action emphasized that multilateral development banks should effectively provide untied development financing without discrimination on account of any member country's political system.

56. Many New International Economic Order commitments began to be reversed from the early 1980s. The fall of oil prices from the late 1970s was paralleled, albeit with varying lags, by declines in other raw material prices despite efforts to stem, if not reverse, the collapse in the terms of trade of primary commodities. "Stagflation" in the West from the mid-1970s undoubtedly contributed to this price collapse.

57. Sharp increases in interest rates in developed countries to reverse inflation precipitated fiscal and sovereign debt crises, mainly in developing countries, after a period of low real interest rates with the increased "recycling" of petrodollars. Consequently, the mid- and late-1970s' boom in many developing countries was abruptly followed by a global recession with sharply reduced primary commodity prices and export earnings.

58. Foreign debt crises forced many developing countries to seek emergency financing from the international financial institutions, which, in turn, urged or required short-term price stabilization policies as well as medium-term structural adjustment packages. Many developmental and counter-cyclical Keynesian policies were subsequently replaced by market liberalization, economic globalization and pro-cyclical, often deflationary, macrofinancial policies.

59. Thus, the world economy that emerged was quite different from that envisaged by the 1974 New International Economic Order. It has been dominated by the Group of Seven (G-7) powerful nations, with the emphasis on minimizing the governments' role in wealth generation and redistribution. Government development policy became subject to externally imposed conditionalities as well as market requirements. Essentially, governments were increasingly expected to leave decisions regarding their policies and institutions to the judgments of donors, creditors and market interests.

60. Almost all developing countries still rely on raw material exports, which are subject to price volatility. Extractive export activities do not create much value added or many other productive jobs. Most developing countries have not been able to attract much foreign direct investment other than for such extractive or low-value added sectors. Meanwhile, the external debt burden of many low-income countries has continued to grow. The World Bank and IMF successfully developed the Heavily Indebted Poor Countries' (HIPC) framework for all creditors to provide debt relief to the world's poorest and most heavily indebted countries, although there is still no multilateral mechanism for orderly workouts of other sovereign debt.

61. Meanwhile, widespread financial deregulation and globalization facilitated net capital flows from the South to the North. Developing countries, as a group, continued to provide net financial resources to developed economies, peaking in 2008 at an all-time high of $883 billion. Despite the worsening crisis from late 2008, such outflows amounting to $513 billion continued into 2009.

62. Since the Latin American and Asian financial crises of the 1990s, developing countries have accumulated even more foreign reserves for self-protection against external financial shocks, thus exacerbating global imbalances and reducing resources otherwise available for more productive investments. The disorderly unwinding of global imbalances during the Great Recession highlights the urgent importance of building a global financial safety net in order to address these problems.

63. The Great Recession of 2008-2009 initially triggered rethinking about the international economic order that has emerged since the 1980s. The influence of the Group of Seven (G-7) finance ministers now appears to have been partially displaced by the ascendance of the Group of Twenty (G-20), now also meeting at the leaders' level since late 2008 and credited with mitigating some adverse effects of the Great Recession and bringing about the collective action needed to accelerate economic recovery. However, there are continued doubts about the accountability, effectiveness and legitimacy of such exclusive plurilateral arrangements.

64. Although better economic performance in emerging-market as well as other developing economies entitled a number of emerging middle-income countries to be part of the Group of Twenty (G-20) grouping, developed countries continue to dominate the major international financial institutions and architecture. Especially since the 2008-2009 crisis, they have been demanding a larger role in international economic governance as the price for assisting in the rescue of the international economic order following the Great Recession.

65. However, the very modest 2008 IMF quota and voice reform, also involving some quota redistribution among the emerging market and transition countries, has not yet gone into effect. As of April 2010, only 70 out of the required 112 members, representing 73 per cent of the total voting power (85 per cent is required), had accepted the proposed amendment to the Articles of Agreement to redistribute voice and participation in the Fund.[15]

66. Likewise, the proposed shifts in voting power to developing and transition countries in the World Bank Group fall short of the recommendation of the High-Level Commission on Modernization of the World Bank Group Governance that voting power in the World Bank should be evenly split between developed and developing countries.[16]

67. Thus, despite the rapid growth and greater economic weight of a number of emerging economies, it would be premature to conclude that the voices of developing countries are being adequately heard. In retrospect, it is clear that the

[15] IMF, "Executive Board Progress Report to the International Monetary and Financial Committee: The Reform of Fund Governance", para. 3. Available from www.imf.org.

[16] "Repowering the World Bank for the 21st Century", Report of the High-Level Commission on Modernization of the World Bank Group Governance, October 2009. Available from www.worldbank.org.

world is witnessing the transformation of the international economic order, but hardly along the lines proposed by the 1974 New International Economic Order.

VI. The changing role of the United Nations

68. A series of landmark United Nations global conferences and summits from the 1990s have generated an unprecedented global consensus on a shared vision of development known as the internationally agreed development goals. These historic conferences and summits reaffirmed some of the spirit and objectives of the 1974 Declaration on the Establishment of a New International Economic Order. In the 2005 World Summit Outcome (General Assembly resolution 60/1), Member States reaffirmed the commitments of the major United Nations conferences and summits in mobilizing development efforts at all levels and in guiding the work of the United Nations system. They also strongly reaffirmed their commitment to meet the goals and objectives agreed to at the conferences and summits, as well as the Millennium Development Goals.

69. *The United Nations Development Agenda: Development for All*[17] thus builds on these shared commitments of the international community and facilitates their implementation in line with the current emphasis on systemic coherence and harmonization. The Agenda summarizes the agreed goals and targets to help advance and assess implementation, and articulates shared principles for development policy options. It belongs to everyone and its achievement depends on the efforts of all stakeholders. That is why the Agenda, which recognizes the immense disparities that characterize today's globalized world and covers a wide range of cross-cutting issues, is so critical.

70. The Agenda encompasses interlinked issues ranging from poverty reduction, gender equality, social integration, health, population, employment and education to human rights, the environment, sustainable development, finance and governance. It includes systemic issues, such as the differential impact of globalization, inequalities among and within countries, and greater participation of developing countries in global economic governance. And the Agenda also addresses the interlinkages between development and conflict.

71. These participatory processes and the development goals agreed to laid the groundwork for the Millennium Summit in 2000, at which a series of challenging time-bound goals and targets were adopted. Many were later articulated as the Millennium Development Goals. The conference process has engaged many key stakeholders: governments, organizations of the United Nations system, other intergovernmental and non-governmental organizations, civil society and the private sector. The process has produced a global partnership for development, with a framework for mutual accountability, now recognized as critical for advancing progress towards all the development goals.

72. The concept of "sustainable development", which was given form at the United Nations Conference on Environment and Development — known as the Earth Summit, held in Rio de Janeiro in June 1992 — defined the responsibilities of States to take full account of the environmental impact of their economic policies. The summit meeting recognized that sustainable development had economic, social

[17] United Nations publication, Sales No. E.07.I.17.

and environmental dimensions, which were interdependent and mutually reinforcing. This sustainable development approach also seeks to eradicate poverty in the developing world and ensure that human lifestyles are less environmentally damaging.

73. The Rio Declaration on Environment and Development emphasized that environmental protection must be an integral part of the development process. Principle 7 of the Rio Declaration affirms "common but differentiated responsibilities", which acknowledges the much greater environmental debt of the developed countries. Besides reflecting differences among countries in their respective historical contributions to contemporary environmental problems, that also acknowledges their respective financial and technological capacities and obligations. This implies that developed countries have to take on greater commitments than developing countries in multilateral environmental agreements.[18]

74. The 2002 Johannesburg World Summit on Sustainable Development re-emphasized that sustainable management of natural resources is an overarching development objective, and called for all governments to begin implementing national sustainable development strategies by 2005. Agenda 21 envisages a transformation of attitudes and behaviours needed for sustainable development. The Plan of Implementation of the World Summit called on all countries to develop programmes to promote sustainable consumption and production. Governments renewed their pledge to protect the world's natural resource base in support of sustainable development.

75. The 1994 International Conference on Population and Development in Cairo recognized the interdependence of population, development and environmental sustainability, calling for suitable macroeconomic and socio-economic policies to promote sustainable development. The recommendations in the Programme of Action recognized that the formulation and implementation of population-related policies were the responsibility of each country and should take economic, social, religious, ethnic and environmental diversity into account. The Conference also recognized the importance of empowering women at all levels.

76. The Fourth World Conference on Women in Beijing in 1995 established the current global policy agenda on gender equality and the empowerment of women linked to the framework of international policy priorities on development and peace.[19] The Beijing Declaration and Platform for Action adopted by the Conference provides a comprehensive blueprint for action on gender equality and women's human rights.

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[18] The Montreal Protocol on Substances that Deplete the Ozone Layer is an outstanding example of effective multilateral cooperation to address global environmental challenges by repairing the stratospheric ozone hole. In that case, there was almost universal support for an agreement binding all countries to phase out their use of most ozone-depleting substances according to a strict timetable. Key features of the agreement include: a grace period for developing countries to comply with the phase-out; a multilateral fund financed by developed countries to cover the incremental costs of such a phase-out in developing countries; arrangements for providing information and analysis on technology options and their economic implications for all countries; and a trade provision to discourage free riders. Many of these features have been cited as a possible model for addressing climate change, although the two problems are somewhat different, notably with respect to the scale of the financing required.

[19] The previous three World Conferences on Women were in Mexico City (1975), Copenhagen (1980) and Nairobi (1985).

77. The World Summit for Social Development in Copenhagen, also in 1995, focused on poverty reduction, employment creation and social integration. In the Copenhagen Declaration on Social Development,[20] the Summit adopted 10 commitments to achieve social development, eradicate absolute poverty, promote full employment, promote social integration, ensure universal and equitable access to education and primary health care and increase financial resources for social development. The Programme of Action was adopted by the largest meeting of national leaders ever held up to then, attended by 117 Heads of State and Government.

78. Many ambitions of the 1974 New International Economic Order were reflected in the International Conference on Financing for Development in Monterrey, Mexico, in 2002, notable for the breadth of its agenda and the extent of collaboration in the United Nations system, including the Bretton Woods institutions. In the Monterrey Consensus, Governments committed themselves and the multilateral system to act on domestic resource mobilization, private resource flows, official development assistance, trade, debt and (global economic) systemic issues.

79. The Monterrey Consensus underscored the need to sustain sufficient and stable financial and other resource flows to developing countries, calling for measures to increase the transparency and sustainability of financial flows, and to contain the excessive volatility of short-term capital flows and highly leveraged transactions. These calls were reiterated at the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, held in Doha in 2008, and the United Nations Conference on the World Financial and Economic Crisis and Its Impact on Development, held in New York in 2009. The need to enhance the coherence and consistency of the international monetary, financial and trading systems, to ensure they support the internationally agreed development goals to "advance to a fully inclusive and equitable global economic system" was emphasized in the Doha Declaration on Financing for Development.

80. The Monterrey Consensus underlined the importance of continuing to improve global economic governance and to strengthen the United Nations leadership role in promoting development. Efforts to reform the international financial architecture should include stronger coordination of macroeconomic policies among leading developed countries and better mechanisms to prevent and manage financial crises. The Monterrey Consensus also recognized the vital importance of strengthening international tax cooperation and called for increasing the effective participation of developing countries and economies in transition in international economic decision-making, including the formulation of financial standards and codes. Thus, Member States made clear their commitment to reform the international financial institutions to strengthen the effective participation of developing countries in multilateral financial and economic decision-making.

81. The 2000 Millennium Summit and the 2005 World Summit were global in both attendance and agenda. Heads of State and Government gathered in New York in September 2000 to reaffirm their "faith in the Organization and its Charter as indispensable foundations of a more peaceful, prosperous and just world". The United Nations Millennium Declaration, adopted by leaders from 189 countries, also states that "Global challenges must be managed in a way that distributes the costs

[20] United Nations publication, Sales No. 96.IV.8, resolution 1, annex I.

and burdens fairly in accordance with basic principles of equity and social justice" (General Assembly resolution 55/2, paras. 1 and 6).

82. At the 2005 World Summit, Member States committed themselves to address the special needs of developing countries in the areas of health, agriculture, conservation, sustainable use of natural resources and environmental management, energy, forestry, and the impact of climate change. The Summit meeting reaffirmed that international trade must promote economic growth, employment and development for all (General Assembly resolution 60/1, para. 27). It was designed as a follow-up summit to the Millennium Summit and the other world conferences. The Summit called for national development strategies as well as full and productive employment and decent work for all.

83. Thus, the United Nations Development Agenda embodies the spirit and aims of the 1974 Declaration on the Establishment of a New International Economic Order, while also addressing the challenges of social progress and environmental sustainability. At the international level, the Agenda includes contemporary challenges of global economic governance such as international finance, debt, aid, trade, technology and migration.

VII. Conclusion

84. In the post-Second World War era of the Bretton Woods-GATT regime until the 1970s, countries were free to have their own trade and industry policies as long as they removed a number of border restrictions on trade and did not discriminate among their trading partners. The rules discouraged quantitative restrictions, but not import tariffs. In the area of international finance, countries were allowed, and indeed encouraged, to maintain restrictions on capital flows. This enabled them to pursue countercyclical and pro-investment macroeconomic policies, resulting in what is now regarded as "Golden Age".

85. Globalization requires governments to remain attractive to international markets for both goods and capital. Domestic regulations and policies are harmonized either with market or other requirements for international economic integration. The new international obligations on trade and foreign investment constrain governmental action, and narrow policy space for national governments, contradicting the spirit of the 1974 New International Economic Order.

86. In such a world, economic policymaking bodies such as central banks and fiscal authorities have been increasingly insulated from political processes, ostensibly to maintain market confidence, thus further undermining policy space and national development strategies. This has failed to deliver prosperity for the poor and most vulnerable.

87. Through the landmark United Nations conferences and summits since the 1990s, Member States have attempted to recapture lost ground for policy space. They have asserted national ownership of development strategies and demanded greater participation in global economic governance. The United Nations Development Agenda, derived from the United Nations conferences and summits, reflects some of the spirit of the 1974 New International Economic Order and also aims to achieve "development for all".

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Note by the Secretary-General

The Secretary-General has the honour to transmit the interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with General Assembly resolution 64/153.

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Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Summary

In the present report, submitted pursuant to General Assembly resolution 64/153, the Special Rapporteur addresses issues of special concern to him, in particular overall trends and developments with respect to questions falling within his mandate.

The Special Rapporteur draws the attention of the General Assembly to his assessment that torture continues to be widely practised in the majority of States, with impunity being one of its root causes. According to him, no further standard-setting is required, as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contains a broad range of positive State obligations aimed at preventing and combating torture. In particular, the Convention requires its 147 States parties to criminalize torture, to establish broad jurisdictions, to investigate all allegations and suspicions of torture and to bring the perpetrators of torture to justice. Unfortunately, those specific positive obligations aimed at combating impunity have not been implemented by most States. If the commission of torture is established by a competent authority, the victims should enjoy the right to fair and adequate reparation, including the means for as full medical, psychological, social and other rehabilitation as possible. States, therefore, have a legal obligation to establish or at least support a sufficient number of rehabilitation centres for victims of torture and to ensure the safety of the staff and patients of such centres. In order to further prevent torture, the Special Rapporteur calls upon all States to promptly ratify the Optional Protocol to the Convention against Torture and to establish, in accordance with its provisions, independent and professional national preventive mechanisms tasked with conducting regular and unannounced visits to all places of detention. They should be granted unrestricted access to all places of detention and the opportunity to have private interviews with detainees, as well as the necessary financial and human resources to enable them to conduct their work effectively.

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I. Introduction

1. The present report is the twelfth submitted to the General Assembly by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It is submitted pursuant to paragraph 38 of General Assembly resolution 64/153 and is the sixth and final report submitted by the present mandate holder. His previous report to the General Assembly (A/64/215 and Corr.1) was devoted to the appalling conditions of detention found by the Special Rapporteur during his country missions. Various factors, including malfunctioning criminal justice systems throughout the world, corruption and a lack of empathy for persons deprived of liberty, have led to a global prison crisis, supported by statistics on the overcrowding of prisons, a high level of pretrial detainees and similar indicators. The Special Rapporteur therefore continues to call upon the General Assembly to take action to improve the situation of the 10 million prisoners and many more detainees in police custody, psychiatric institutions and other places of detention worldwide. In particular, there is an urgent need to draft and adopt a special United Nations convention on the rights of detainees.

2. In the present report, the Special Rapporteur wishes to draw the attention of the General Assembly to the alarming situation concerning torture in the world. During the past six years, he carried out fact-finding missions to 17 countries around the world and three joint studies together with other special procedures. In all but one country (Denmark, including Greenland), he found clear evidence of torture. In some countries there seemed to be only isolated cases of torture, but in the majority of countries he visited (which constitute a representative sample of all countries in the world), torture is practised in a routine, widespread and sometimes even systematic manner. Taking into account that torture constitutes one of the most serious human rights violations and a direct attack on the core of the personal integrity and dignity of human beings, this is an alarming conclusion.

3. When the United Nations was founded in the aftermath of the Second World War and the Nazi Holocaust, it was undisputed that the prohibition of torture should be included as one of the few absolute and non-derogable rights in the International Bill of Human Rights. Nevertheless, the practice of torture persisted in many regions of the world, most notably in the military dictatorships in Latin America established in the late 1960s. This prompted the United Nations to draft and adopt the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1984. The Convention builds upon the absolute and non-derogable prohibition of torture and creates a number of specific obligations for States parties: to prevent torture, to criminalize torture and bring the perpetrators of torture to justice on the basis of a wide range of jurisdictions, including universal jurisdiction, and to provide victims of torture with the right to an adequate remedy and reparations for the harm suffered. In 2002, the Convention against Torture was supplemented by an Optional Protocol with the aim of preventing torture and improving prison conditions through a system of unannounced and regular visits to all places where persons may be deprived of their liberty. Today, 147 of the 192 States Members of the United Nations, including 15 of the 17 States visited by the Special Rapporteur, are parties to the Convention and 54 are parties to the Optional Protocol. If States take their obligations under the Convention and the Optional Protocol seriously, torture could easily be eradicated in today's world. There is no need for further standard-setting, only for the implementation of existing standards.

4. The fact that torture continues to be practised on such an alarming scale throughout the world shows that most States do not seem to take those obligations seriously. In the present report, the Special Rapporteur provides an analysis of the three main obligations under the Convention and the Optional Protocol (fighting impunity, providing victims with rehabilitation and establishing effective national preventive mechanisms to inspect places of detention) and how they have been implemented by States, above all those visited by him. Those 17 countries serve as a representative sample of all countries in the world and the Special Rapporteur wishes to express his sincere gratitude to the respective Governments for having extended an invitation to him and for their cooperation during his country missions.

5. The Special Rapporteur draws attention to document A/HRC/13/39, his main report to the Human Rights Council at its thirteenth session, as well as document A/HRC/13/39/Add.5 in which he analysed the phenomena of torture and cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention.

II. Activities related to the mandate

6. The Special Rapporteur draws the attention of the General Assembly to the activities carried out pursuant to the mandate since the submission of his report to the Human Rights Council (A/HRC/13/39 and Add.1-6).

A. Communications concerning human rights violations

7. During the period from 19 December 2009 to 31 July 2010, he sent 34 letters of allegations of torture to 19 Governments, and 81 urgent appeals on behalf of persons who might be at risk of torture or other forms of ill-treatment to 46 Governments. In the same period, 71 responses were received.

B. Country visits

8. With respect to fact-finding missions, he undertook visits to Jamaica and Papua New Guinea. He also received an invitation from the Government of Greece to visit the country between 10 and 20 October 2010.

9. The Special Rapporteur visited Jamaica from 12 to 21 February 2010. At the conclusion of his mission, he thanked the Government for its invitation and cooperation. The Special Rapporteur did not find torture, in the classical sense of deliberately inflicting severe pain or suffering as a means of extracting a confession or information, to be a major problem in Jamaica. However, he found a considerable number of cases where persons were subjected to various degrees of beating as punishment. The Special Rapporteur was concerned about appalling conditions of detention, which reflect a complete disrespect for the human dignity of persons in conflict with the law. In addition, he found a general atmosphere of violence and aggression in almost all places of detention, as well as no clear separation of detainees according to the different stages of criminal procedure. With regard to children, the Special Rapporteur was greatly concerned that there is no clear definition or criteria in the legislation for the identification of an uncontrollable

child, allowing the judiciary to detain a relatively large number of children under such orders. The Special Rapporteur was encouraged by the fact that no death sentence has been executed since 1988. On the other hand, the rise in fatal shootings by the police, and the apparent lack of investigation and accountability were of great concern to him.

10. The Special Rapporteur conducted a visit to Papua New Guinea from 14 to 26 May 2010. At its conclusion, he expressed his appreciation to the Government for the full cooperation extended to him. The Special Rapporteur was concerned that the police are not always in a position to enforce the rule of law, leading to private security companies carrying out some of the police's main duties. He was particularly concerned about the lack of capacity to prevent and to investigate crimes relating to domestic violence, tribal fighting and victims of accusations of sorcery. The Special Rapporteur found systematic beatings of detainees upon arrest or within the first hours of detention, many times as a form of punishment. In correctional institutions, those who attempt to escape or succeed in escaping are tortured and disabled upon recapture. The Special Rapporteur was disappointed that the Police Juvenile Policy and Protocols were not implemented. He was also concerned to find boys mixed with adults in male correctional institutions. With regard to women, they are at high risk of abuse, both in the domestic and in the public spheres, with domestic violence being widespread. He also received many allegations of sexual abuse by arresting officers in exchange for release from custody.

11. The Special Rapporteur would like to recall requests for invitations sent to the following States: Afghanistan (2005); Algeria (request first made in 1997); Belarus (2005); Bolivia (Plurinational State of) (2005); Côte d'Ivoire (2005); Egypt (1996); Eritrea (2005); Ethiopia (2005); Fiji (2006); Gambia (2006); India (1993); Iran (Islamic Republic of) (2005); Iraq (2005); Israel (2002); Liberia (2006); Libyan Arab Jamahiriya (2005); Russian Federation with respect to the Republic of Chechnya (2000); Saudi Arabia (2005); Syrian Arab Republic (2005); Tunisia (1998); Turkmenistan (2003); United States of America (2004); Uzbekistan (2006); Yemen (2005). He regrets that some of those requests are long-standing. The Governments of Cuba and Zimbabwe extended invitations to visit their countries in 2009; the mission to Zimbabwe was postponed at the last minute and his mission to Cuba did not take place.

C. Key press statements

12. On 22 December 2009, the Special Rapporteur issued a statement expressing serious concern about the forcible return of 20 ethnic Uyghurs from Cambodia to China, before completion of determination of their refugee status.

13. On 31 December 2009, the Special Rapporteur issued a joint statement with another mandate holder urging the Government of Thailand to stop the expulsion of ethnic Hmongs.

14. On 8 March 2010, on the occasion of International Women's Day, the Special Rapporteur issued jointly with other special procedures mandate holders a press release setting out a vision for women's rights.

15. On 9 June 2010, the Special Rapporteur issued a statement expressing his disappointment that his official mission to Cuba would not take place.

16. On 26 June 2010, on the occasion of the International Day in Support of Victims of Torture, the Committee against Torture, the Subcommittee on Prevention of Torture, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the Special Rapporteur issued a statement recalling that despite an established international legal framework, torture prevails in many regions of the world and is often accompanied by an alarming degree of impunity.

D. Highlights of key presentations/consultations/training courses

17. On 23 February, the Special Rapporteur met with representatives of the Embassy of the Islamic Republic of Iran in Vienna to discuss several issues related to the country and to the mandate.

18. On 24 February, the Special Rapporteur attended the Fourth World Congress against the Death Penalty in Geneva and gave a presentation entitled "The death penalty and human dignity".

19. On 3 March, the Special Rapporteur participated together with other mandate holders in a panel on the theme "Violence is not culture — end violence against women and girls in the name of 'culture'" organized in New York by the Global Campaign to Stop Killing and Stoning Women.

20. On 4 March, the Special Rapporteur delivered the keynote address at the annual symposium organized by the University of Iowa College of Law on "A critical juncture: human rights and United States standing in the world under the Obama Administration". On 5 March, he made a presentation on a panel on "Torture, military prosecutions, habeas corpus and United States standing in the world".

21. On 10 March, the Special Rapporteur gave a lecture at the Geneva Academy of International Humanitarian Law and Human Rights, on the topic "Torture and other cruel, inhuman and degrading treatment".

22. On 10 March, the Special Rapporteur participated in the Human Rights Council's annual meeting on the rights of the child, on the theme of the fight against sexual violence against children, and made a presentation entitled "Sexual violence in institutions, including in detention facilities".

23. From 9 to 12 March, the Special Rapporteur participated in several side events during the thirteenth session of the Human Rights Council, including the Berkeley University Panel on Project 2048; "Exploring sustainable systems to document torture: the role of health professionals" organized by the International Rehabilitation Council for Torture Victims and the World Medical Association; "Torture and accountability: the responsibility of the legal profession" organized by the International Commission of Jurists; "Human rights in Zimbabwe: one year on. Time to ratify conventions?" organized by the Zimbabwe Human Rights NGO Forum; and "Religion in prisons" organized by Penal Reform International.

24. On 8 and 9 April, the Special Rapporteur gave two lectures on "Torture and other cruel, inhuman or degrading treatment or punishment: experience of the Special Rapporteur on torture", at Pomona College and Loyola Law School in Los Angeles, United States of America. In addition, he made a presentation on "Torture as a tool in the war on terror and legal obligations of the Obama Administration", at Pomona College.

25. From 10 to 17 April, the Special Rapporteur attended the Twelfth United Nations Congress on Crime Prevention and Criminal Justice in Salvador de Bahia, Brazil, and gave a speech at the opening plenary session on "Children, youth and crime". The Special Rapporteur was a speaker at the Open Society Justice Initiative meeting on "Prioritizing pretrial justice: transformative systems that contribute to socio-economic development and the rule of law" on the topic "Pretrial detention and torture". On 13 April, he was a speaker on the "History and significance of the Optional Protocol to the Convention against Torture" at the Association for Prevention of Torture/Japan Federation of Bar Associations/Penal Reform International meeting on "Visiting mechanisms and transparency in prison: the Optional Protocol to the Convention against Torture and worldwide developments". On 14 April, the Special Rapporteur was a speaker at the meeting on "The need for a United Nations convention on the rights of detainees" organized by the International Commission of Catholic Prison Pastoral Care; he was also a speaker at a meeting organized by Penal Reform International and Transparency International on "Inspections of places of detention". On 15 April, the Special Rapporteur was keynote speaker of the Workshop B "Survey of United Nations and other best practices in the treatment of prisoners in the criminal justice system" on "Conditions of detention and the need for a United Nations convention on the rights of detainees". On 17 April, the Special Rapporteur was a speaker on the topic "HIV/AIDS in prison settings" at the United Nations Office on Drugs and Crime meeting on "HIV and criminal justice".

26. On 12 May, the Special Rapporteur gave two presentations in Port Vila, Vanuatu, entitled "From international recognition of the prohibition of torture to its implementation at the national level, or why is it worthwhile to ratify the Convention against Torture?" and "Good examples of accountability mechanisms for torture at the international level", on the occasion of a round-table discussion and workshop on the prevention of torture and ill-treatment, organized by the Ministry of Justice, the Ministry of Foreign Affairs and the Regional Office for the Pacific of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and held in the presence of the President of Vanuatu.

27. On 24 May, the Special Rapporteur gave a lecture at the University of Papua New Guinea, Port Moresby, on "The mandate of the Special Rapporteur on torture, and the prevention of torture".

28. On 2 June, the Special Rapporteur together with other mandate holders presented their joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42) at the fourteenth session of the Human Rights Council.

29. On 7 and 8 June, the Special Rapporteur gave a series of lectures on the Convention against Torture and the prohibition of refoulement, organized by the Law Society of Hong Kong.

30. On 15 and 16 June, the Special Rapporteur held several meetings with representatives of the United States State Department and Congress in Washington, D.C., to discuss topics related to the country and the mandate. On 16 June, he held a meeting at the Inter-American Commission on Human Rights of the Organization of American States to discuss the situation in Central America in relation to the mandate. On 18 June, the Open Society Institute organized a conference at which the Special Rapporteur presented his work and spoke about the United States and the fight against terrorism and torture.

31. Between 28 June and 2 July 2010, the Special Rapporteur attended the annual meeting of special rapporteurs, representatives, independent experts and chairpersons of working groups of the Human Rights Council, in Geneva. On 29 June, the Special Rapporteur gave a keynote speech at a workshop organized by Linking Solidarity, on enforced disappearances in Africa.

32. On 14 July, the Special Rapporteur gave training to approximately 80 staff members of the United Nations Office on Drugs and Crime on "Human rights and HIV/AIDS", in Vienna.

33. On 17 July, the Special Rapporteur was part of a panel on the topic "Which future for the Council and its review?", at the Diplomatic Conference "2011 review of the Human Rights Council", organized in Venice, Italy, by the European Inter-University Centre for Human Rights and Democratization.

34. On 20 July, in the context of the XVIII International AIDS Conference in Vienna, the Special Rapporteur attended a meeting of the Inter-Parliamentary Union and the Austrian Parliament, on the topic of "Criminal justice and public health". On the same day, the Special Rapporteur participated in an event with another mandate holder and the Director of the European Union Agency for Fundamental Rights on "The role of human rights mechanisms in advancing the AIDS response", organized by the International AIDS Society. On 23 July, he gave a speech on "HIV and incarceration: prison and detention" at the plenary session of the Conference.

III. Impunity as a root cause of the prevalence of torture

A. Prevalence of torture

35. The scale and scope of impunity found in many countries visited by the Special Rapporteur has been one of his most disappointing findings. During his time as mandate holder, the Special Rapporteur has been witness to the distressing reality that both torture and ill-treatment are widespread practices throughout the world. The existing international legal framework provides a broad range of norms and standards to prohibit, prevent and eradicate torture. Their effective application, however, continues to be a challenge.

36. States bear the main responsibility for implementing international human rights standards, including the prohibition of torture. However, torture occurs because national legal frameworks are deficient and do not properly codify torture as a crime with appropriate sanctions. Torture persists because national criminal systems lack the essential procedural safeguards to prevent its occurrence, to effectively investigate allegations and to bring perpetrators to justice. Moreover, torture remains entrenched because of a climate of tolerance of excessive use of force by law enforcement officials in many countries.

B. Convention against Torture

37. Article 4 of the Convention against Torture sets out the obligation of States parties to ensure that all acts of torture are an offence under their criminal legislation and that appropriate penalties are foreseen. Article 4, paragraph 1, must be read in conjunction with article 1, paragraph 1, of the Convention, since it would

be very difficult for a State party to criminalize an offence, establish the corresponding jurisdiction and institute prosecution, without formulating a proper definition of torture.

38. The alignment of national legislations with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is crucial for its effective implementation. Therefore, the definition of torture contained in article 1, paragraph 1, of the Convention, with all its elements (infliction of severe pain or suffering; intention and specific purpose; and involvement of a public official), must be taken into account by States when making torture an offence under domestic criminal law.

39. The Committee against Torture has been clear about the requirement to make "all acts of torture", including acts of attempt, complicity and participation, an offence under criminal law, with penalties commensurate to the gravity of the crimes. In addition, even if not explicitly stated in the Convention, the Committee considers instances that include "instigation, consent or acquiescence", to be covered by the terms "complicity or participation", giving rise to individual criminal responsibility under article 4 of all public officials sufficiently involved under article 1.

40. The Convention does not explicitly provide for a specific penalty and type or extent of sentence for the offence of torture, leaving it to the discretion of the State party to decide, taking into account the grave nature of the crime. The Committee against Torture has stated on several occasions that consideration of the appropriate penalty must take into account not only the gravity of the offence but the severity of penalties established for similar crimes in each State.

C. Factors contributing to impunity

41. During his fact-finding missions, the Special Rapporteur has been able to identify various factors that contribute to impunity and therefore to the persistence of torture. They include the lack of proper criminalization of torture; the absence of impartial investigations into allegations; and the lack of prosecution of perpetrators.

1. Criminalization of torture in domestic law

42. Of all the countries visited by the Special Rapporteur, only Jamaica and Papua New Guinea have not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The other 15 countries have ratified the Convention and accepted the obligations contained therein, including those of making torture an offence under criminal law and establishing appropriate penalties for perpetrators.

43. However, the reality is quite different. For the general prohibition of torture to become effective, national criminal legislation should incorporate such a prohibition and make torture a punishable offence. The Special Rapporteur found instances, including in Denmark, Nigeria and Jamaica, where torture is not explicitly defined in domestic criminal law. In Nepal, for example, torture is not a criminal offence and in Indonesia, although it is defined in its Human Rights Law, there are no provisions concerning torture in the criminal legislation.

44. In certain cases, the definition of torture in national criminal law is too narrow and/or leaves out important elements established in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the case of Mongolia, the definition fails to include any of the essential elements of torture, including that the act (or omission) causes severe pain or suffering, whether physical or mental, that it is intentionally inflicted for a specific purpose and by or at the instigation of or with the consent or acquiescence of a public official acting in an official capacity. Article 251 of the Mongolian Code of Criminal Procedure was amended in 2008 but the provision does not apply to all public officials or persons acting in an official capacity.

45. With regard to the first element of the definition (causing severe pain or suffering, whether physical or mental), both Georgia and Togo limit their definitions to physical pain. The legislation of Jordan only partly covers the aspect of mental pain or suffering. The definition in Paraguay makes torture very difficult to prove, as it requires the intent to destroy or seriously damage the personality of the victim, hence excluding many acts that would be considered as torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

46. The second element of the definition in the Convention (intention) is lacking from the definition of torture in the legislation of both Georgia and Togo. With regard to the element of the involvement of a public official or other person acting in an official capacity, the legislation in neither Togo nor Jordan differentiates between private actors and public officials. Kazakhstan limits criminal responsibility to public officials and does not criminalize torture committed by others acting in an official capacity or at the instigation of or with the consent or acquiescence of public officials.

47. The criminal codes in many countries contain provisions outlawing certain acts which may fall within the scope of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, such as the infliction of bodily injuries or the use of duress. Nevertheless, while some of those acts may be part of an act of torture, the criminal codes fall short of providing comprehensive protection to the physical and psychological integrity of the victims. Some of the most sophisticated torture methods do not cause any physical injuries, but cause extreme pain and suffering.

48. The Special Rapporteur found legislation where the definition was in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in some countries, such as the Republic of Moldova. The definition in the Sri Lankan legislation is in accordance with the Convention; however, it does not include "suffering". Moreover, since the implementation of the Emergency Regulations, most of the safeguards against torture either do not apply or are simply disregarded. In Equatorial Guinea, the definition was mainly in line with the Convention, with a catch-all clause broad enough to comply with it.

2. Adequacy of penalties

49. The fact that torture is either not codified or not properly defined in national criminal laws facilitates too lenient penalties, not commensurate with the gravity of the crime. This is another factor that can contribute to a climate of impunity by

sending a non-deterrent message to potential perpetrators and by nurturing a lack of awareness among judges and lawyers.

50. While the Convention does not indicate a specific penalty for torture, it is generally accepted that the punishment should be similar to the penalties established for the most serious offences in each national legal framework. This would ensure that sentences are commensurate with the gravity of the offence and that no statutes of limitations apply.

51. However, during his fact-finding missions, the Special Rapporteur found that torture is often treated as a misdemeanour, such as in Mongolia, and penalties are too lenient, sometimes ranging from a few months to two years' imprisonment. In the Republic of Moldova and Equatorial Guinea, the sanctions could be for up to five and six years' imprisonment, respectively. The sentences in other countries, such as Jordan, were simply administrative sanctions ranging from six months to three years. In Togo, where a proper crime of torture is lacking, the provision of the Criminal Code relating to "wilful violence" is sometimes applied, but subject to statutes of limitations.

52. In Georgia, the Special Rapporteur received allegations that victims were encouraged by the prosecution to agree to plea-bargaining agreements without acknowledging their ill-treatment by the police.

3. Impartial investigations

53. Throughout his fact-finding missions, the Special Rapporteur found that another factor contributing to impunity is the lack of investigation and prosecution following acts of torture and ill-treatment. Although prompt and impartial investigations should be carried out without delay whenever there is a suspicion of torture or an explicit allegation, this is too often not the case.

54. Despite the fact that, in many cases, detainees have visible signs of ill-treatment, the authorities generally fail to initiate investigations. Medical examinations are often not conducted, nor are detainees provided with medical treatment. In Paraguay, the Special Rapporteur was concerned to see that officials completely disregarded their duty to initiate ex officio investigations. In Georgia, judges or procurators have an obligation to make inquiries or investigate allegations ex officio; however, no action is taken in the vast majority of cases. The same applies in the Republic of Moldova, where the legal provision calling for ex officio investigations is not applied in practice.

55. Ex officio investigations, as required by article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, are one of the strongest tools for preventing torture and combating impunity. As victims are often unaware of existing complaints mechanisms, they lack confidence that their complaints will be effectively addressed or they are afraid to file them. This problem is worse in countries where the obligation to initiate ex officio investigations is not enshrined in the law, as was observed by the Special Rapporteur in some of his missions, including those to Jamaica and Sri Lanka. Whenever there are reasonable grounds, including credible evidence, that an act of torture has been committed, States should conduct an investigation, irrespective of whether a complaint has been filed. In Jordan, the Special Rapporteur found that even though the Court of Cassation had overturned a number of convictions on the grounds that security

officials had obtained confessions under torture, this did not trigger official criminal investigations against the perpetrators. The same holds true for Sri Lanka.

56. A further concern is the fact that the authorities entrusted with investigating allegations of torture and ill-treatment are frequently the same authorities who are accused of committing such acts (i.e. the police), as is the case in Denmark, Georgia, Jordan and Nepal. Additionally, in Georgia, Mongolia and Paraguay, the investigation may also be carried out by the Office of the Prosecutor, the same authority responsible for prosecuting the case against the victim. The lack of independent investigating bodies with no connection to the authority investigating or prosecuting the case (a proper "police-police") prevents victims from obtaining justice and is one of the main impediments to combating impunity.

4. Prosecutions

57. In terms of prosecutions, the Special Rapporteur was sadly surprised at the low number of people prosecuted for torture in the countries he visited. He came across cases of officials being subject to disciplinary or administrative procedures for offences such as abuse of power and, in some cases, convictions for offences such as causing physical injuries, as in Jordan and Paraguay. These types of convictions not only result from the lack of a specific criminal offence of torture, but are in some instances used to treat the act of torture as a minor offence.

58. In most countries visited by the Special Rapporteur, he was not presented with a single case of a law enforcement official being suspended, investigated and prosecuted, let alone convicted, for torture. This was the case in Mongolia, Indonesia, Nepal, Nigeria and Togo, among other countries. Three countries where the Special Rapporteur did receive information that law enforcement officials had been convicted of torture were China, the Republic of Moldova and Sri Lanka. In Sri Lanka, 34 officials had been indicted and three convicted of torture. In Uruguay, there were several ongoing trials for crimes committed in the past. Although several people had been convicted, none had yet been convicted of torture. In Equatorial Guinea, only one official had been tried, but had not been convicted, despite the fact that torture is systematically practised there.

59. In cases where there are convictions, the Special Rapporteur witnessed that the perpetrators are often given minor sentences or are only obliged to pay fines. This lack of appropriate sanctioning, including lack of convictions, convictions based on other offences, and the use of disciplinary sanctions or minor sentences, translates into a lack of any deterrent and is an affront to the victims.

60. In addition, one of the practices observed by the Special Rapporteur was that in some countries, such as Sri Lanka, reparations are used as a substitute for prosecution. That is, if the victim received compensation or another form of reparation, the case was closed and no further criminal proceedings were pursued. Although, in many instances, victims may be in need of money to pay for medical treatment or legal fees, compensation should not be used as a substitute for prosecution.

IV. Role of rehabilitation centres for victims of torture

61. Following the obligations of States to prevent torture and to hold perpetrators accountable, article 14 of the Convention against Torture stipulates that each State

party shall ensure in its legal system that victims of torture obtain redress and have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. That obligation includes the establishment and support of torture rehabilitation centres. That duty was further emphasized by the Commission on Human Rights in its resolution 2004/41, in which it stressed that "national legal systems should ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress and are awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation". In that regard the Commission encouraged "the development of rehabilitation centres for victims of torture".

62. Most existing torture rehabilitation centres are private, founded by physicians, psychologists, family members of victims and other concerned individuals or groups in response to the failure of Governments to ensure that victims of torture receive the necessary treatment. Torture rehabilitation centres fill a gap and provide highly specialized medical and psychosocial care to those in need. Member organizations of the International Rehabilitation Council for Torture Victims, the umbrella organization of 146 rehabilitation centres worldwide, provided treatment to more than 100,000 survivors of torture and trauma in 2009 alone. In the same year, the United Nations Voluntary Fund for Victims of Torture provided grants to 195 projects in 65 countries, for a total amount of 10 million United States dollars to support victims of torture.

Healing bodies, minds and social ties

63. In order to fully appreciate the importance of the work of torture rehabilitation centres, one has to recall the devastating impact of torture on human beings. For most victims, the experience of their ordeal will remain present for the rest of their lives, if not physically then at least mentally. Often, the psychological impact of torture amounts to what has been described as a "disintegration of the personality". The harm inflicted may be so profound that it shatters the very identity of a person, the ability to feel any joy or hope, to engage with his or her environment, or to find any meaning in life. Depression, anxiety disorders including flash-backs, loss of self-respect, cognitive impairment and suicidal tendencies are only some of the consequences of torture. The impact of the abuse is rarely limited to the person directly targeted but also victimizes their families and even their communities. The victims' inability to resume their work further adds to their social seclusion and financial strain. In general, experiences of torture cannot be entirely "left behind", let alone forgotten.

64. Centres for the rehabilitation of victims of torture support survivors in their efforts to learn to live with their experiences and assist them in regaining the strength to lead self-determined lives. Reflecting the far-reaching consequences of torture, rehabilitation centres provide a holistic treatment for survivors, aimed at healing their "bodies, minds and social ties". Rehabilitation centres possess specialized medical know-how and experience in dealing with torture injuries, and provide primary care and sometimes longer in-patient stays focusing on pain relief and the avoidance of any long-term physical impairment. Their specialization in torture traumata facilitates the provision of high-quality care, and provides expertise from which other members of the health community, for example local hospitals, can learn. In terms of psychological treatment, rehabilitation centres constitute first and foremost a safe haven where survivors have their suffering acknowledged and

can develop trust towards those around them. The specific treatment that is eventually provided depends on their specific situation and personality and the type of abuse they have suffered, and also reflects the relevant cultural context. Patients may initially stay for some time at the rehabilitation centres, where intensive psychological counselling and, if needed, adequate psychotropic medication is provided. Overwhelmingly, the experience of torture requires long-term psychological support, which may include individual or group counselling, occupational therapy, social rehabilitation and other forms of support. Rehabilitation centres assist their clients for years on their long journey back into their lives.

Rehabilitation, awareness and justice

65. It is important to note that the services provided by rehabilitation centres for the victims of torture go beyond the medical aspects of rehabilitation. They also contribute to raising awareness of the issue of torture and the establishment of justice. Alerting and informing society of the prevalence of torture and States' involvement in it can trigger public pressure and eventually bring about policy changes. During his visit to the Republic of Moldova, the Special Rapporteur was impressed with the work of the Medical Centre for Rehabilitation of Torture Victims in Chisinau, which had managed to inform, train and mobilize lawyers, journalists and other professionals in order to support victims and disseminate information about cases of torture, both within the country and abroad. In the United Kingdom of Great Britain and Northern Ireland, the Medical Foundation for the Care of Victims of Torture initiates programmes of survivor activism, encouraging victims to share with the public their stories, images and communications about survival, and works to make their voices heard. Similarly, centres in Argentina, Brazil and Chile are at the forefront when it comes to dealing with the legacy of the national security regimes and the continuing impunity for the crimes committed during those periods. In many countries, rehabilitation centres engage in campaigns advocating for legal reform and the passing of laws that comply with the Convention against Torture and its Optional Protocol. In Pakistan, Struggle for Change, aside from providing multidisciplinary services to survivors, played a leading role in national advocacy efforts that eventually contributed to the ratification of the Convention.

66. Rehabilitation centres also assume a decisive role in holding perpetrators accountable. With their forensic expertise they ensure that torture traumas, whether visible or invisible, are scrupulously documented before they disappear. Even if, at the time of the examination, it may seem unlikely that proceedings will be held, adequate records can eventually constitute crucial evidence in later criminal or civil cases. In this regard, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) provides an important standard for the documentation of abuse, which goes beyond the therapeutic purpose in a narrow sense. Medical records can be instrumental in overcoming the otherwise lack of objective evidence with which survivors of torture are so commonly confronted, given that torture mostly takes place without witnesses. They provide evidence which can corroborate the victim's account of the ordeal. Establishing the facts of torture before a court and holding perpetrators accountable can give torture survivors a sense of justice and facilitate both a coming to terms with their past suffering and a comprehensive process of healing. Additionally, monetary compensation as a result of civil proceedings may provide the necessary funds for additional medical treatment. Acknowledging the

importance of the Istanbul Protocol, the International Rehabilitation Council for Torture Victims and the Turkish Medical Association, together with the Government of Turkey, concluded last year the training of 4,000 medical doctors, 1,000 prosecutors and 500 judges.

Against all odds

67. Throughout his tenure of the mandate, the Special Rapporteur has been impressed by the courageous, dedicated and professional work undertaken by rehabilitation centres around the world. In all the centres he visited during his fact-finding missions, he was impressed that staff members had been working extremely hard and often at considerable personal sacrifice. Confronted with the continuous arrival of new victims, aware of the large number of those who cannot be reached and knowing how quickly a person's life can be broken and how long it takes to heal, their work may at times appear frustrating. Working with survivors of torture involves listening to their experiences of abuse and its consequences, and may place a considerable psychological burden on those treating torture victims. Nevertheless, the staff of rehabilitation centres work relentlessly, often on a voluntary basis, in order to provide treatment and shelter.

A. Hostile environment

68. Rehabilitation centres for the victims of torture often operate in an environment characterized by insecurity and violence. Their engagement with victims of torture, the provision of medical services and particularly the documentation of torture cases make them frequent targets of those who inflicted the suffering. As a consequence, physicians, forensic experts, psychologists, administrative staff and volunteers all work under considerable personal risk and are often confronted with harassment, threats, assault or even killings.

69. More subtle, but similarly obstructive, has been the introduction of new, sweepingly restrictive regulations for civil society organizations in many countries. While it has to be recognized that it is within the discretion of each State to adopt domestic legislation concerning non-governmental organizations, such provisions sometimes appear to be more the expression of a general suspicion or even hostility towards the work of civil society organizations working in the field of human rights, rather than serving any reasonable administrative purpose. In Egypt, the El Nadeem Centre for Rehabilitation of Victims of Violence, which provides holistic support to victims of torture through medical rehabilitation, family support and legal aid, is threatened by a proposed law on non-governmental organizations. If approved, the law will lead to the centre's closure, along with that of many independent non-governmental organizations. A similar situation already exists in Algeria, where the political situation presents extreme challenges for the establishment of non-governmental organizations. As a result, despite efforts by the International Rehabilitation Council for Torture Victims, there is as yet no rehabilitation centre in the country. Likewise, in the Sudan, the Amel Centre for Treatment and Rehabilitation of Victims of Torture was recently closed in a crackdown on independent non-governmental organizations. Yet, in other areas work continues. In Zimbabwe, the Counselling Services Unit, which the Special Rapporteur visited in 2008, is a heartening example of how courageous individuals manage to provide crucial rehabilitation services and documentation in sometimes extreme

circumstances. There are other examples of rehabilitation centres providing unmatched services, yet many prefer to keep a low profile because of the dangers of public exposure resulting from the nature of their work.

70. Rehabilitation centres deserve appreciation and full support for their courage and for the determination with which they continue against the odds to accept patients and care for them in an uncompromising manner. While some medical institutions, such as State hospitals, may succumb to pressure exerted by the police or the military and turn a blind eye when it comes to documenting torture, the rehabilitation centres rigorously and consistently uphold professional and ethical medical standards. Ultimately, to attack a torture rehabilitation centre is to attack the victims of torture who have already suffered abuse and are in need of treatment.

B. Lack of financial resources

71. As earlier emphasized, international human rights law places States under the obligation to ensure that victims of torture are provided with the means for as full physical and psychological rehabilitation as possible, implying the establishment or support of torture rehabilitation centres. At the same time, one has to realize that the majority of torture survivors do not have access to adequate treatment. Most centres, where they do exist, are overburdened by the number of victims, and their staff members constantly operate on the verge of exhaustion. This distressing situation is largely attributable to the limited financial support for rehabilitation centres. Reflecting this impasse, the United Nations Voluntary Fund for Victims of Torture, as one of the main sources of funding for rehabilitation centres worldwide, receives grant requests every year for more than double the resources it is provided with by a relatively small number of donor States. In its 2009 report, the Board of Trustees of the Fund held out the prospect of a financial gap of 3 million United States dollars, which would equate to a reduction of its grants by 20 per cent unless State contributions increase. Furthermore, the recent global financial crisis has had a tangible impact on many centres, forcing them to cut back existing services because funding from private foundations has decreased. The Kosovo Rehabilitation Centre for Torture Victims, in Pristina, which has carried out excellent work, is facing closure in December 2010 because of a lack of funding. In Greece, the Medical Rehabilitation Centre for Torture Victims, in Athens, closed in 2009 for lack of funding, resulting in a complete lack of rehabilitation centres for torture victims.

72. While the United Nations Voluntary Fund for Victims of Torture and international donors such as the European Union (EU), as well as private foundations, are the most important sources of support for rehabilitation centres, it has to be noted that Governments fall overwhelmingly short of their obligation and leave domestic centres and torture survivors struggling. The Special Rapporteur interprets this shortcoming as a further example of the prevalent reluctance on the part of States to deal with the issue of torture in a rigorous manner and to acknowledge the scope of the problem. The unwillingness to ensure adequate funding of domestic rehabilitation centres is a manifestation of the same attitude of taking torture prevention lightly that results in failure to investigate crimes perpetrated by State agents and to eventually hold them accountable.

73. The lack of funding for rehabilitation centres is by no means limited to poor States or States where torture may be rife, but also holds true for States which are

generally considered to be relatively safe and affluent, for example EU member States. In this regard, the Special Rapporteur notes with concern the upcoming phasing-out of EU support for centres located within its area and the simultaneous failure of European Governments to step up their support for their own domestic institutions. Rehabilitation centres within the EU assume a crucial role in providing services to thousands of individuals who have had to flee their home countries and seek refuge after experiencing war, persecution and torture. While these survivors may have succeeded in escaping from imminent persecution and from their torturers, their experiences are still very much present and continue to haunt them. Often alone in a foreign country, confronted with xenophobic resentment, general suspicion that there is abuse of the asylum system, and concerns about the outcome of protracted and increasingly restrictive asylum procedures, survivors of torture find themselves in an environment which is far from conducive to a process of healing. The availability in those States of well-functioning rehabilitation centres where many refugees can open up and receive medical treatment for the first time is essential and their value cannot be overestimated. The Special Rapporteur calls for a change of the perception prevalent in many Western countries that torture is a distant issue. Many Europeans would be surprised to learn that their immigrant neighbour is in fact one of many survivors of torture who have found refuge in their country.

74. In addition to their therapeutic role, rehabilitation centres in third countries provide medical records which may also be important when it comes to holding foreign perpetrators accountable, for example through universal jurisdiction proceedings. Furthermore, they fulfil an important role in the development of capacity and the dissemination of state of the art methods of treatment, for example through the training of domestic health professionals or other staff from centres in less affluent countries.

V. Role of national preventive mechanisms

75. The ultimate aim must be to prevent acts of torture and ill-treatment before they occur. There are numerous methods of prevention that have been developed in the past, which, if adequately implemented by States, could easily eradicate torture: abolition of secret and incommunicado detention; proper registration of every detainee from the moment of arrest or apprehension; prompt access to legal counsel within 24 hours; access to relatives; prompt access to an independent judge; presumption of innocence; prompt and independent medical examination of all detainees; video/audio recording of all interrogations; no detention under the control of the interrogators or investigators for more than 48 hours; prompt, impartial and effective investigation of all allegations or suspicions of torture; inadmissibility of evidence obtained under torture; and effective training of all officials involved in the custody, interrogation and medical care of detainees. As previously emphasized by the Special Rapporteur and his predecessors, the most effective preventive measure against torture and ill-treatment is the regular inspection of places of detention. Regular inspections can ensure the adequate implementation of the above-mentioned safeguards against torture, create a strong deterrent effect and provide a means to generate timely and adequate responses to allegations of torture and ill-treatment by law enforcement officials.

76. Many countries already have national mechanisms in place for the inspection of places of detention, such as visiting judges and prosecutors, inspection boards

subordinate to relevant ministries, and national human rights institutions, or they allow non-governmental organizations to carry out monitoring visits. In addition, there are independent regional mechanisms such as the European Committee for the Prevention of Torture and international mechanisms such as the Working Group on Arbitrary Detention and the Special Rapporteur on torture that can inspect places of detention.

77. In view of the great importance of systematic, independent external monitoring for the prevention of torture, and in response to the shortcomings of the existing mechanisms, the General Assembly adopted the Optional Protocol to the Convention against Torture in 2002. The rationale behind the Optional Protocol is based on the experience that torture mainly happens in places of detention, owing to their opaqueness to the outside world and lack of external scrutiny. The Optional Protocol is intended to introduce a shift from a paradigm of opacity, in which detainees are locked away from the outside world and the outside world is kept away from the detainees, to one of transparency. Through the opening up of places of detention, the entire system of detention can be exposed to public scrutiny, made more transparent, and its officials deterred from abusive treatment by being held accountable for their actions.

78. The Optional Protocol takes a two-pillar approach, with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on the one hand, and national preventive mechanisms in each State party on the other. As the Subcommittee can only sporadically conduct monitoring visits to the increasing number of States parties to the Optional Protocol, the main responsibility for systematic monitoring rests with the national preventive mechanisms.

79. As of July 2010, a total of 54 States, including 8 States visited by the Special Rapporteur, were parties to the Optional Protocol. Of those, 32 States have designated national preventive mechanisms. Given that all the existing national preventive mechanisms are still at an initial stage and have yet to develop their practices, the current phase is absolutely crucial in terms of paving the way for the Optional Protocol to exert its full potential for the prevention of torture. Against this background, a first stocktaking would appear to be instructive in order to identify lessons learned and potential pitfalls in the process of setting up national preventive mechanisms.

80. The Optional Protocol does not prescribe a specific form for national preventive mechanisms but leaves it to States parties how to "maintain, designate or establish ... one or several independent national preventive mechanisms". However, the Optional Protocol and the related Principles relating to the Status of National Institutions (The Paris Principles) prescribe clear minimum criteria for national preventive mechanisms. Any national preventive mechanism is to be provided with a broad mandate to regularly visit all places of detention with a view to examining the treatment of detainees, to make recommendations to the relevant authorities and to submit draft legislative proposals and observations. It must have unrestricted access, without prior notification, to all places of detention and enjoy the right to hold private interviews with detainees. It must be granted full institutional, functional, personal and financial independence from the State authorities, be pluralistically composed to have the "required capabilities and professional knowledge" and provide for a balanced gender and adequate minority representation.

81. States parties have taken different approaches to establishing a national preventive mechanism in compliance with the Optional Protocol, either designating existing institutions or establishing an entirely new body, both of which have

advantages and disadvantages. By designating an existing institution such as the national human rights institution, the national preventive mechanism may benefit from that institution's previous experience and positive and visible public profile. On the other hand, it may take over potential problems and shortcomings of the existing institution in terms of public perception, a narrow mandate and a lack of resources. The establishment of an entirely new body may require additional efforts and resources but enables States parties to model the mechanism precisely according to the requirements of the Optional Protocol, instead of making amendments to existing legislation. The ideal model depends on the specific circumstances of each State.

82. Most fundamentally, States should provide their national preventive mechanism with a clear legal basis specifying its powers and ensuring its complete independence from the State authorities. Regrettably, some States fail to provide their national preventive mechanism with the necessary security and stability. This is the case, for example, in Mali, where no express guarantees or powers foreseen by the Optional Protocol are provided, or in Maldives and Mauritius, where the mandate of the national preventive mechanism is only based on a governmental decree. In order to provide the national preventive mechanism with the stability and authority needed for the execution of its difficult tasks, States parties should enact a specific national law establishing the mechanism, as in France and Luxembourg. That law must be in strict compliance with the Optional Protocol. This includes ensuring its complete functional independence and the complete independence of its staff, which implies that members of the national preventive mechanism must not be representatives of the Government, as is the case in Mali, and must maintain no close personal ties to the authorities to be inspected, as is the case in the Republic of Moldova.

83. Even the most independent national preventive mechanism with the strongest mandate cannot function without sufficient resources. Therefore, article 18, paragraph 3, of the Optional Protocol expressly requires States to provide "the necessary resources for the functioning of the national preventive mechanisms". However, lack of resources remains one of the main problems of existing national preventive mechanisms, as the task of regularly monitoring all places of detention is very complex and costly. It is by the allocation of adequate resources that States parties demonstrate their genuine commitment to the prevention of torture. France set a positive example by assigning extensive human and financial (2.5 million euros) resources to its national preventive mechanism. Similarly, New Zealand has considerably increased the resources of its national preventive mechanism after the first year of functioning. The Special Rapporteur and the Subcommittee on Prevention of Torture previously raised the concern that some States that had designated existing institutions as national preventive mechanisms had not allocated sufficient additional resources, for example Denmark, Maldives and Sweden. A particularly worrying example is Germany, where the national preventive mechanism has an alarming lack of human and financial resources. As the country with the largest population in Europe, it is merely assigning four part-time unpaid staff members to the regional national preventive mechanism body and one unpaid person to the federal national preventive mechanism body, with a budget of only 300,000 euros. The Special Rapporteur has previously criticized these resources as being insufficient to allow the national preventive mechanism to fulfil the task of regular, systematic monitoring of all places of detention.

84. The provision of inadequate resources has an effect on the capabilities and professional knowledge required by article 18, paragraph 2, of the Optional Protocol. A pluralistic composition cannot be ensured by a national preventive mechanism body that consists of only one member, as is the case in Germany. In contrast, the French national preventive mechanism has 14 full-time inspectors and can call on an additional 14 inspectors to take part in specific missions, thereby facilitating the participation of persons from various educational and professional backgrounds. Small national preventive mechanisms with only a few members have to largely rely on the expertise of ad hoc members or external experts for the effective performance of monitoring visits. In practice, this can create difficulties, including in regard to their availability. Therefore, some States, for example the Czech Republic, Denmark, Luxembourg and Slovenia, have entered into cooperation agreements with relevant civil society organizations in order to ensure external support for their national preventive mechanisms.

85. In order for national preventive mechanisms to carry out their functions effectively, they must have a clear understanding of their tasks and roles. Particular problems can arise for a national preventive mechanism that functions within a previously existing institution such as a national human rights institution, for a national preventive mechanism composed of several bodies and for a national preventive mechanism that cooperates institutionally with civil society organizations. Those models all require a particular effort of planning and coordination and a clarification of the exact roles and tasks within the institution. In national human rights institutions designated as national preventive mechanisms, the roles of the members of the national preventive mechanism and the staff of the national human rights institution may not always be clear and the different tasks of the national human rights institution may impede the effective and autonomous functioning of the national preventive mechanism. Therefore, it is recommended that national human rights institutions designated as national preventive mechanisms create separate units or departments where employees are explicitly and fully assigned for the performance of the tasks of the national preventive mechanism, as in Costa Rica, Luxembourg, Maldives, Mexico and Spain. The units should have an autonomous agenda and programme of action, and their own staff and budget. Concerning the designation of several existing institutions as national preventive mechanisms, as in the United Kingdom and New Zealand, adequate coordination of the work of the bodies is necessary in order for them to function effectively and coherently. An equal need for coordination and coherence arises in cases where national preventive mechanisms cooperate institutionally with non-governmental organizations, as in the Republic of Moldova and Slovenia. In the Republic of Moldova, their institutional involvement has led to a serious internal conflict over the competences and roles of the different members. Additionally, there is a risk of the dilution of their mandates for non-governmental organizations and of a loss of independence and credibility for the national preventive mechanism if the division of tasks is unclear.

86. The setting up of a national preventive mechanism requires a careful preparatory process that is to be "public, inclusive and transparent", including civil society and all other actors involved in the prevention of torture, as in Honduras and Paraguay. A transparent and inclusive preparatory process creates greater public attention for the future national preventive mechanism, ensuring its credibility, and may prevent problems after its designation. Many States seek assistance from

various specialized institutions in the field of torture prevention and from the Subcommittee on Prevention of Torture and OHCHR for the process of setting up national preventive mechanisms. The Special Rapporteur has continuously offered his assistance in this regard and encourages States to further avail themselves of the mandate. As the Subcommittee on Prevention of Torture has indicated, the development of a national preventive mechanism "should be considered an ongoing obligation, with reinforcement of formal aspects and working methods refined and improved incrementally".[1] In that regard, the adoption, as in Costa Rica and Maldives, of clear and ambitious action plans defining the goals and strategies of the national preventive mechanism is useful.

VI. Conclusions and recommendations

87. **Although torture constitutes one of the most brutal human rights violations and a direct attack on the core of human dignity, it continues to be widely practised in the majority of States in all parts of the world. This alarming conclusion of the Special Rapporteur on torture is based on his experience after carrying out the mandate for almost six years, and after conducting 17 fact-finding missions to countries in all regions of the world and preparing three joint studies together with other special procedures mandate holders.**

88. **While the appalling conditions of detention in most countries of the world could be effectively addressed by adopting a special United Nations convention on the rights of detainees, no further standard setting is required to combat torture. Its prohibition is one of the few absolute and non-derogable human rights and part of ius cogens, and the Convention against Torture and its Optional Protocol contain a broad range of very specific positive State obligations aimed at preventing and combating torture. If States parties to the Convention and the Optional Protocol would abide by their legally binding obligations, torture could easily be eradicated.**

89. **In order to combat increasing levels of crime, terrorism and other forms of organized crime effectively, Governments in too many countries seem willing to restrict certain human rights by granting their law enforcement, intelligence and security forces very extensive powers. This leads to an environment conducive to undermining the absolute prohibition of torture. The brutalization of many societies has reached a level where torture is simply regarded by Governments and the population at large as the "lesser evil". This trend is alarming. There is a need for a new global awareness-raising campaign to change this climate of tolerance towards excessive use of force by law enforcement officials. Governments need to be reminded that torture is not an effective means of combating crime. On the contrary, it contributes to the further brutalization of societies and the spiral of violence which many societies suffer from. Torture is nothing other than an act of barbarism.**

90. **Impunity is one of the root causes of the widespread practice of torture. This was recognized by the international community in the 1980s when adopting the Convention against Torture as the first human rights treaty with detailed obligations to criminalize torture, to establish broad jurisdictional**

[1] CAT/C/40/2, para. 28 (n).

competences, to investigate all allegations or suspicions of torture, and to arrest suspected perpetrators of torture and bring them to justice. In most of the 147 States parties to the Convention against Torture, those legal obligations, deriving from articles 4 to 9, 12 and 13 of the Convention, have not been implemented. States should, first of all, ensure through legislative measures that torture, as defined in article 1 of the Convention, is made a crime with appropriate penalties, which must be applicable on the basis of the principles of territoriality, nationality and universal jurisdiction. Secondly, States shall establish professional authorities to promptly and impartially investigate all allegations and suspicions of torture, with the aim of identifying the perpetrators, including superior officers who ordered or condoned torture, and bringing them to justice.

91. Victims of torture have a right to complain to a professional authority which is independent from the authority accused of torture and which has the obligation to promptly and impartially examine all allegations or suspicions of torture. Victims and witnesses should be protected against all ill-treatment or intimidation as a consequence of their complaints or any evidence given. If torture is established by a competent authority, victims should enjoy the right to fair and adequate reparation, including the means for as full medical, psychological, social and other rehabilitation as possible. States, therefore, have a legal obligation to establish or at least support a sufficient number of rehabilitation centres for victims of torture and to ensure the safety of their staff and patients. The Special Rapporteur also urges States to ensure that survivors of torture who seek refuge in their countries have access to adequate medical and psychosocial treatment. Screening procedures allowing for the early identification of torture victims can be instrumental in that regard. Asylum authorities should be required to consider seriously the medical expertise of domestic rehabilitation centres and take account of their assessments when deciding upon asylum requests. Health professionals should be provided with training on how to apply the Istanbul Protocol. The Special Rapporteur also calls upon Governments, not least those responsible for the practice of torture, to contribute generously to the United Nations Voluntary Fund for Victims of Torture.

92. Finally, all States have an international legal obligation to take effective legislative, administrative, judicial and other measures to prevent torture. In this respect, the Special Rapporteur calls upon all States to promptly ratify the Optional Protocol to the Convention against Torture and to establish, through legislative action on the basis of an inclusive and transparent process, independent and professional national preventive mechanisms tasked with conducting regular and unannounced visits to all places of detention. Such national preventive mechanisms should be granted unrestricted access to all places of detention and the opportunity to have private interviews with detainees. The Special Rapporteur urges all States parties to the Optional Protocol to the Convention against Torture to provide national preventive mechanisms with the necessary financial and human resources to enable them to regularly inspect all places of detention, to examine the treatment of detainees and to prevent acts of torture or ill-treatment in detention.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Independence of judges and lawyers

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, submitted in accordance with resolution 8/6 of the Human Rights Council.

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Interim report of the Special Rapporteur on the independence of judges and lawyers

Summary

The present report addresses the need to establish, strengthen and develop a strong judiciary within the national criminal justice system, composed of independent and impartial judges and magistrates, as a fundamental tool in the fight against impunity. According to the Special Rapporteur, a human rights violation, a crime or an offence which goes unpunished is the source of the commission of other crimes or violations. Impunity undermines democracy, the rule of law and people's trust in State institutions.

The Special Rapporteur closely examines the role that judicial actors play within the criminal justice system to ensure accountability for human rights violations and crimes, and provides examples to illustrate the relationship between national and international criminal justice systems. The Special Rapporteur examines and evaluates obstacles and factors that hinder the effective investigation, prosecution and adjudication of violations and addresses issues relating to enhancing the criminal justice system at its various levels. She also analyses how national criminal justice systems can be structured using the human rights-based approach at the institutional and organizational levels to combat impunity.

Impunity may be perpetuated owing to political interference in the functioning of the criminal justice system and restrictions placed on the exercise of judicial authority. The judiciary should never be under the de jure or de facto control or direction of the executive branch of government. States must respect the independence of the judiciary and measures should be taken to comply fully with the guarantees for judicial independence. The Special Rapporteur concludes that without independence of the judiciary there is no separation of powers and without separation of powers there is no rule of law or democracy.

Accordingly, States must provide adequate resources to enable the judiciary to perform its functions properly and, most importantly, States must assure the protection of all judicial actors against attacks, threats and acts of intimidation or reprisals. No such acts should go unpunished. In those States where impunity is prevalent, special mechanisms should be urgently established to ensure compliance with judicial orders, sentences and resolutions.

The Special Rapporteur identifies judicial corruption as a factor contributing to impunity. To counter judicial corruption, systems for allocating cases to judges should be transparent. She also notes that impunity cannot be combated in the absence of efficient witness protection programmes. Continuing human rights legal education, most notably in regard to adequate knowledge of the relevant international standards and jurisprudence, is an essential tool to foster the capacity of judges, prosecutors and lawyers to combat impunity.

In her recommendations, rooted in the concepts of democracy, separation of powers and the rule of law, the Special Rapporteur calls on States to develop a human rights-based approach when developing an impunity strategy. The principles of participation and inclusion; apportioning the roles of duty-bearers and rights-holders; focus on vulnerable groups; legal empowerment; transparency and

accountability and identification of obligations, should be taken into account. She recommends designing a mapping exercise; the creation of an appropriate database; and strengthening awareness-raising and participation. Furthermore, the Special Rapporteur believes that the work of truth and reconciliation commissions and other commissions of inquiry can be complementary to the essential role of judicial mechanisms in protecting human rights and combating impunity.

The Special Rapporteur also analyses recent developments in the field of international justice. She calls upon States to cooperate fully with the international tribunals, in particular with the International Criminal Court, and to implement in full their decisions and resolutions, as well as their arrest warrants. She also calls upon those tribunals to constitute a model in respect of due process and of the rights of detainees to a fair trial.

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I. Introduction

1. In the present report the Special Rapporteur examines the subject of combating impunity for human rights violations through the national criminal justice system and analyses the role of judicial actors to ensure accountability for human rights violations. The report addresses the root problems that lead and contribute to impunity and evaluates the obstacles and factors that hinder the effective investigation, prosecution and adjudication of violations. The report also analyses how national criminal justice systems can be structured using a human rights-based approach at the institutional and organizational levels to combat impunity. The report further highlights the relationship between national and international criminal justice to combat impunity.

2. The report, presupposing that long-term and sustainable solutions for addressing impunity should aim mostly at building and improving the domestic capacity of criminal justice systems to ensure accountability, will focus on the need to develop an effective criminal justice system at the national level as a fundamental and indispensable tool to combat impunity. The Special Rapporteur addresses issues relating to enhancing the criminal justice system at the investigative, prosecutorial, adjudication and remedial/enforcement levels. Reforming the criminal justice system cannot in itself combat impunity; that will require systematic reform of other State institutions also.

3. Impunity is a cause and a consequence of, inter alia, State instability, erosion of the rule of law, weak accountability mechanisms and the imposition of limitations on the enjoyment of human rights. While the root causes of impunity are multifaceted and go beyond the judicial system,[1] impunity is sustained in situations where there is a weak and dysfunctional criminal justice system.[2] In a context where there is no accountability for human rights violations, a culture is often established and perpetuated which provides a framework for the commission of further violations by Government and non-State actors, including ill-treatment and torture, extrajudicial killings, arbitrary detentions, enforced disappearances and violation of due process rights. Victims are unable to seek redress and this may lead to loss of trust, respect and legitimacy for the judicial system in some contexts, resulting in communities choosing alternative means of dispute resolution, such as vigilantism, mob justice or other forms of private justice.[3]

II. Activities of the Special Rapporteur

4. The activities carried out by the Special Rapporteur from her appointment in August 2009 to March 2010 are referred to in the report she submitted to the Human Rights Council on 9 April 2010 (A/HRC/14/26). Since that time, the Special Rapporteur has participated in various conferences and meetings, in addition to taking action, on a daily basis, in response to communications and allegations received from individuals and organizations.

[1] See E/CN.4/2004/60, paras. 36-38.
[2] See A/HRC/14/24, para. 53.
[3] A/64/187.

5. In her report to the Human Rights Council, the Special Rapporteur pointed out the need for continuing education in international human rights law for judges, prosecutors and lawyers. During the fourteenth session of the Human Rights Council, on 4 June 2010, the Special Rapporteur convened a side event on her thematic report, organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in cooperation with the Permanent Missions in Geneva of Brazil and Hungary, on the issue of "Capacity-building and human rights training as a fundamental pillar for judicial independence". The Special Rapporteur was a speaker at another side event, organized by various non-governmental organizations on 3 June 2010, on "Protective measures for judges and lawyers". From 29 June to 3 July, the Special Rapporteur participated in the annual meeting of mandate-holders of the special procedures, held in Geneva.

6. From 12 to 14 April 2010, the Special Rapporteur participated in the Congress of the Latin American Federation of Magistrates in Mar del Plata, Argentina, where she gave a speech and facilitated a section devoted to the independence of the judiciary in the region. On 22 April 2010, the Special Rapporteur gave the opening speech on the issue "Human rights and judicial independence" at an event organized by the Association of Judges for Democracy and the Centre for Justice and International Law in Tegucigalpa. She also participated in the tenth Biennial Conference of the International Association of Women Judges, held from 11 to 15 May 2010 in Seoul on the theme "Judicial challenges in a changing world", and presented a statement on "Terrorism and global security: threats to the independence of the judiciary in a changing world". On 25 June 2010, the Special Rapporteur attended an event organized by the Judges for Judges Organization in Amsterdam, the Netherlands, on the issue of "The role of the Special Rapporteur and non-governmental organizations" and participated in a panel on cases from various parts of the world in which the independence of the judiciary had been compromised.

7. The Special Rapporteur has been invited by the Government of Mozambique to undertake a mission there from 26 August to 4 September 2010. The report on the mission and the related recommendations will be included in an addendum to the Special Rapporteur's next report to the Human Rights Council. The Special Rapporteur wishes to thank the Government of Mozambique for its cooperation. She also wishes to thank the Government of Mexico for the invitation extended to her. The mission to Mexico will take place for two weeks at the beginning of October 2010. She also wishes to thank the Governments of Burundi, Bulgaria, Georgia and Romania, which have extended invitations to visit their countries.

8. The Special Rapporteur recalls that requests to visit the following countries are pending replies: Angola (request made in 2008), Bangladesh (2007), Cambodia (2006), Cuba (1995), Egypt (1999), Equatorial Guinea (2002), Fiji (2007), Iran (Islamic Republic of) (2006), Iraq (2008), Kenya (2000), Myanmar (2009), Nigeria (1995), Pakistan (2000), the Philippines (2006), Sri Lanka (1999), Tunisia (1997), Turkmenistan (1996), Uzbekistan (1996) and Zimbabwe (2001). Bearing in mind that in situ visits greatly help to dispel misunderstandings and identify appropriate solutions, the Special Rapporteur hopes that invitations from the Governments of the above-mentioned countries will be received in the near future.

III. International standards on impunity

9. The "Set of principles for the protection and promotion of human rights through action to combat impunity" defines impunity as "the impossibility, de jure or de facto, of bringing the perpetrators of violations to account — whether in criminal, civil, administrative or disciplinary proceedings — since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims".[4] Principle 1 provides that impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.

10. States bear a responsibility not only to investigate gross violations of human rights, but also to ensure the right of victims to know the truth, to provide adequate reparation and to take all reasonable steps to ensure non-recurrence of the said violations.[5] According to the Human Rights Committee, failure by a State party to investigate allegations of human rights violations or to bring the perpetrators to justice could in and of itself give rise to a separate breach of the International Covenant on Civil and Political Rights.[6] Those obligations arise in particular in respect of violations recognized as criminal under either domestic or international law[7] and concern the investigation and punishment of the acts not only of those acting in an official capacity, but also of private actors. The Committee against Torture, in its General Comment No. 2, has stressed that the failure of the State to exercise due diligence to intervene to stop and to sanction torture and to provide remedies to victims facilitates and enables non-State actors to commit with impunity acts impermissible under the Convention. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking.[8]

11. When it comes to gross human rights violations and international crimes, such as extrajudicial executions, enforced disappearance, torture, human rights treaties establish more specific obligations for State parties, which clarify the meaning of the right to an effective remedy for victims.[9] In this respect, specific provisions exist in the Convention against Torture[10] and in the International Convention for the Protection of all Persons against Enforced Disappearances[11] (which is not yet in force) concerning the duty of States to establish their jurisdiction in order to investigate, prosecute and ensure redress for the victims.

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[4] Updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1).

[5] See Principle 1 of the updated set of principles.

[6] See, for instance, Human Rights Committee, General Comment No. 31, "The nature of general legal obligations imposed on States parties to the Covenant", paras. 15 and 18.

[7] Ibid., para. 18.

[8] Committee against Torture, General Comment No. 2, para. 18.

[9] See Human Rights Committee, General Comment No. 31, para. 16.

[10] Articles 5, 7, 12, 14.

[11] Articles 9, 11, 12, 24.

12. The Commission on Human Rights, in its resolution 2003/72, expressed its conviction that the practice and expectation of impunity for violations of international human rights or humanitarian law encourage violations and are among the fundamental obstacles to the observance and the full implementation of international human rights and humanitarian law. The Commission recognized that exposing violations of human rights, holding the perpetrators, including their accomplices, accountable, obtaining justice for their victims, as well as preserving historical records of such violations and restoring the dignity of victims through the acknowledgement and commemoration of their suffering, would guide future societies and were integral to the promotion and implementation of all human rights and fundamental freedoms and to the prevention of future violations. It also recognized that crimes such as genocide, crimes against humanity, war crimes and torture were violations of international law and that perpetrators of such crimes should be prosecuted or extradited by States, and urged all States to take effective measures to implement their obligations to prosecute or extradite perpetrators of such crimes.[12] In its resolution 2005/81, the Commission recognized that amnesties should not be granted to those who commit violations of human rights and international humanitarian law that constitute crimes, urged States to take action in accordance with their obligations under international law, welcomed the lifting, waiving or nullification of amnesties and other immunities, and recognized that United Nations-endorsed peace agreements could never promise amnesties for genocide, crimes against humanity, war crimes, or gross violations of human rights.[13]

13. The Special Rapporteur's predecessor addressed the question of impunity as it relates to amnesty laws, noting the incompatibility of broad amnesty laws with human rights standards.[14] He recommended to the Human Rights Council, among other things, that in order to help combat impunity and uphold the right of victims to truth, justice and reparation, it might be useful to create an international database on what are known as justice and reconciliation processes so as to give the States concerned access not only to technical assistance but also to best practices and case law on which they can base themselves.[15] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has considered that impunity continues to be the principal cause of the perpetuation and encouragement of torture.[16] The Special Rapporteur on extrajudicial, summary or arbitrary executions has addressed the role of criminal justice systems, police investigations, prosecutions, commissions of inquiry, oversight mechanisms and witness protection programmes in combating impunity.[17] The Working Group on Enforced or Involuntary Disappearances has noted that impunity for enforced disappearances remains a problem and has called upon States to prevent impunity by taking lawful and appropriate steps to bring to justice those alleged to have committed enforced disappearances before ordinary courts.[18] The Human Rights Committee has elaborated on the obligations to investigate and prosecute human rights violations

[12] See E/2003/23, chap II.A, resolution 2003/72.
[13] E/2005/23, chap. II.A, resolution 2005/81, para. 3.
[14] E/CN.4/2005/60, paras. 46-48.
[15] E/CN.4/2004/60, para. 75.
[16] See A/54/426, paras. 47-48, A/56/156, paras. 26-33.
[17] See A/HRC/14/24, A/HR/14/24/Add.8, A/63/313.
[18] A/HRC/13/31, para. 650.

and has expressed concern when legislation adopted by States may contribute towards impunity.[19]

IV. Defining the role of the criminal justice system in combating impunity

14. Criminal justice systems are variously structured; commonly they are composed of the investigating or judicial police, the prosecutors and the courts. In some jurisdictions, all those institutions are part of the criminal justice system, while in other jurisdictions, institutions such as the police and the prosecution are part of the executive branch. In other situations, the prosecution is established as an autonomous institution. Defence lawyers, public defenders, victims and members of their families, independent institutions, administrative bodies, the legislature and executive branches are also critical actors. All of them may have responsibility in the various stages of the criminal justice process, from the investigation to provision of redress. Owing to the complexity of the criminal justice system there is a need for the clear division of functions and tasks to avoid potential overlaps and duplication of work. Thus, coordination and cooperation have to be facilitated to ensure the delivery of justice.

15. Combating impunity entails bringing the perpetrators of violations to account, whether in criminal, civil, administrative or disciplinary proceedings.[20] Although international law recognizes all those possibilities, certain offences must be subject to criminal sanctions. The Human Rights Committee has noted that purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies within the meaning of article 2, paragraph 3 of the International Covenant on Civil and Political Rights in the event of particularly serious violations of human rights.[21] Priority is given to the criminal justice system to undertake the requisite investigations and prosecutions, which at times is the only possible effective protection, for example in case of serious crimes such as executions, killings, forced disappearance and torture. The criminal justice system is indispensable as it is the only institution with the mandate and obligation to conduct investigations and bring criminal proceedings against the perpetrators, default of which may give rise to a breach of international obligations. However, preventing the recurrence of acts of impunity requires the adoption of broader measures, such as executive, policy and administrative actions.[22]

16. Of particular concern are cases in which impunity is directly linked to the action, or is facilitated by the inaction, of those linked to the criminal justice system — such as the investigative or judicial police, or security and intelligence officers — as well as judicial actors, who should be at the forefront of the fight against impunity. This situation is perpetuated, in particular, where there is no

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[19] A/49/40 (Vol.II), chap. IX.B, Communication No. 322/1988, *Hugo Rodríguez v. Uruguay* (views adopted by the Committee on Economic, Social and Cultural Rights on 19 July 1994.)

[20] See E/CN.4/2005/102/Add.1.

[21] Human Rights Committee, *Bautista v Colombia*, Communication No. 573/1993, para. 8.2; *Arhuaco v. Colombia*, Communication No. 612/1995, para. 8.2.

[22] Human Rights Committee, General Comment No. 31, "Nature of the legal obligation on States parties to the Covenant" (CCPR/C/21/Rev.1/Add.13), paras. 17-18.

internal independence or there is a lack of effective oversight mechanisms within the criminal justice system.[23]

V. Challenges to institutions of the criminal justice system in combating impunity

A. Investigative stage

17. An essential feature of a functional criminal justice system is the conduct of effective and prompt investigations. There are many factors which prevent investigators from performing their work effectively, including lack of capacity, scarcity of investigative and technical resources, lack of training and limited human and financial resources. In some cases, investigators may be unable to carry out credible and effective investigations for lack of forensic capacity. This could result in crime scenes not being secured in time, so that fundamental evidence is lost. As criminal activities become more sophisticated, there is a need to adapt criminal investigation processes by making use of the most advanced technological innovations in the field.

B. Prosecution

18. Impunity for human rights violations cannot be combated when cases are not brought before the courts. There are various challenges that prosecutors may encounter in initiating criminal proceedings, including insufficient resources, inadequate professional capacities, poor conditions of service — including inadequate remuneration — understaffing, lack of independence and security concerns. It is essential that prosecutors are independent and impartial in the discharge of their functions. The Guidelines on the Role of Prosecutors stipulate, for instance, that the office of the prosecutor shall be strictly separate from judicial functions.[24]

19. Criminal law requires that cases be proved according to the requisite standards of proof. Cases may be dismissed by the courts owing to insufficiency of evidence or non-compliance of evidence collection methods with international standards. The use in judicial proceedings of evidence obtained through torture has been a preoccupation of the United Nations human rights bodies.[25] A working relationship of cooperation has to be fostered between prosecutors and investigators to ensure that evidence which is gathered is sufficient to sustain criminal charges and that the methods of gathering evidence comply with international law.[26]

20. In some countries, prosecutors work with the judicial police as its investigative arm and the latter can only start an investigation upon the prosecutor's authorization. In that context, it is essential that cooperation between investigative

[23] See A/HRC/11/2/Add.6, paras. 33-37.

[24] Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, para. 10.

[25] See A/61/259; see also article 15 of the Convention against Torture.

[26] See Guidelines on the Role of Prosecutors, para. 16.

and prosecution services are enhanced to ensure that investigations are undertaken promptly and respect international legal norms.

21. In some States discretionary powers are granted to prosecutors to determine which cases will be prioritized, proceed to trial or be discontinued. It should be appreciated that, in such a scenario, those discretionary powers are not absolute and there should be clear guidelines on the discontinuance or prioritization of cases, as this may result in unfairness and arbitrariness in the decision-making process. Where prosecutors decide to discontinue a case, reasonable justification should be provided. Lack of resources should never be a reason for discontinuation.

C. Adjudication

1. Judicial independence

22. Impunity may be perpetuated owing to political interference in the functioning of the criminal justice system and restrictions placed on the exercise of judicial authority. Such interference may be direct or indirect and may emanate from the Government or non-State actors. States must respect and observe the independence of the judiciary[27] and measures should be taken to fully comply with the guarantees of judicial independence. Without independence of the judiciary there is no separation of powers, without which there is no guarantee of the rule of law or democracy.

23. The elements of judicial independence were analysed by the Special Rapporteur's predecessor, including the importance of judicial independence; the selection and appointment of judges and magistrates; the judicial budget; freedom of association and expression; the assignment of court cases; independence within the judiciary; tenure and non-removability; immunity; promotion; conditions of service; judicial salaries; human and material resources; and security and training.[28] As pointed out by the Human Rights Committee in its General Comment No. 32, a situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal. The requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, of the International Covenant on Civil and Political Rights is an absolute right that is not subject to any exception.[29]

2. Operational efficiency

24. The criminal justice system usually has a number of streamlined procedures from commencement of a case before the court to determination of the final order. Such procedures may contribute towards impunity as they may result in inordinate delays, corruption and arbitrariness, especially where they are bureaucratic, unclear or overly complex. Caution has to be taken against developing overly bureaucratic, complicated and inefficient systems which can deter victims and negate access to and the delivery of justice.

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[27] Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August to 6 September 1985, Principle 1.

[28] See A/HRC/11/41.

[29] Human Rights Committee, General Comment No. 32 (CCPR/C/GC/32), para. 19 (g).

25. A problem in the court process often manifests itself in the form of case backlog as cases are not adjudicated within reasonable time limits. An endemic backlog of cases can be a reflection of structural and administrative issues in the criminal justice system. This can be as a result of organizational structures in case flow, from registration, case filing, record keeping, rules of procedures and evidence, transfer of case dockets between the various criminal justice institutions, allocation of cases to judges and the appeals process to delivery of the final judgement. Delays in the determination of criminal cases may also result in the violation of rights of the accused person, such as the right to be tried without undue delay[30] and the principle that deprivation of liberty should not be unduly prolonged, especially where the accused has been denied bail.[31] While due consideration should be given to the specific circumstances of each case, such delays have to be reasonably justified and the rights of the accused must be respected at all times.

26. The backlog of cases can also be due to a shortage of judges and prosecutors, which sometimes is so severe that cases are routinely adjourned. In other instances, judges may be unwilling to hear cases, owing to a variety of factors. Reducing the case backlog therefore cannot be achieved solely by employing more judges and court officials; it is also dependent on addressing operational structural deficiencies.

3. Material resources

27. The Basic Principles on the Independence of the Judiciary and applicable regional standards require that States must provide adequate resources to enable the judiciary to properly perform its functions.[32] Often the judiciary receives a negligible share of the national budget as compared to other public institutions. States must take measures to ensure that the judiciary is adequately funded and that there is sufficient infrastructure to allow the justice system to function properly.

28. The problem of insufficient funding for the judiciary has been of concern to the previous Special Rapporteur, who underlined the importance of adequate material resources for the proper functioning of the justice system.[33] In certain countries, court premises are dilapidated[34] or there are insufficient courtrooms to conduct hearings, inadequate office space and a lack of basic material resources, including furniture and basic office equipment such as computers, communication technology and photocopiers. A lack of resources can de-motivate judges as they discharge their functions, and constrain the capacity of the judiciary to adjudicate cases in a timely manner, consequently contributing to undermining the system. The Human Rights Committee has observed that where delays in adjudication are caused by a lack of resources and chronic underfunding, supplementary budgetary resources should be allocated to the administration of justice to the extent possible.[35]

29. The Special Rapporteur is aware that some States, especially those in transition, are financially constrained. However, funding for the judiciary should be

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[30] International Covenant on Civil and Political Rights, article 14.3 (c). See also Human Rights Committee, Communication No. 676/1996, *Yasseen and Thomas v. Guyana* and Communication No. 938/2000, *Siewpersaud, Sukhram and Persaud v. Trinidad and Tobago*.

[31] See Human Rights Committee, Communication No. 818/1998, *Sextus v. Trinidad and Tobago*.

[32] Basic Principles on the Independence of the Judiciary, para. 7.

[33] A/HRC/11/41, paras. 76-77.

[34] A/HRC/8/4/Add.2, para. 33.

[35] CCPR/C/GC/32, para. 27.

prioritized. The failure of a State to fund the judiciary adequately undermines the concept that those who are responsible for human rights violations must be brought to justice,[36] and implies perpetuating a culture of impunity.

4. Enforcement of judicial decisions

30. Article 2.3 (c) of the International Covenant on Civil and Political Rights provides that parties to the Covenant undertake to ensure that the competent authorities shall enforce remedies when granted. Principle 17 of the Basic Principles and the Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law provides that States shall, with respect to claims by victims, enforce their domestic judgements for reparation to victims. States should provide, under their domestic laws, effective mechanisms for the enforcement of reparation judgements.

31. A key obstacle to combating impunity is the inability or unwillingness to enforce judicial decisions and orders. A judicial decision which is not enforced defeats the purpose of seeking recourse from the judicial system, as a remedy cannot be obtained in practice. Perpetrators are not imprisoned, or they are released without serving the complete sentence; compensation is not paid to the victim or members of his or her family, takes prolonged periods to be paid or is insufficient. This ultimately encourages repetition of the commission of human rights violations, crimes and offences, further weakening and undermining the criminal justice system.

32. The Special Rapporteur considers that, in those States where impunity is prevalent, mechanisms should be established to ensure compliance with judicial orders, sentences and resolutions, and that adequate reparation, including economic compensation and restitution, are granted to victims within an adequate time.[37]

D. Defence

33. In criminal cases, the role of the defence lawyer or public defender is indispensable to guarantee a fair trial. This has been recognized in international law under the International Covenant on Civil and Political Rights[38] and the Basic Principles on the Role of Lawyers,[39] which specify that all detained persons have the right to be informed of their right to legal counsel and to access counsel upon arrest or detention or when charged with a criminal offence and in defence during trial. The Special Rapporteur has often raised concerns with Member States on de jure and de facto limitations that are placed on lawyers in accessing their clients, including supervised contacts.[40] The Special Rapporteur has also noted trends of denying or

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[36] See CCPR/C/21/Rev.1/Add.13, para. 18.

[37] See Principle 16 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

[38] See article 14.3.

[39] Principles 1, 5 and 8 of the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

[40] See A/HRC/14/26/Add.1 and A/HRC/11/41/Add.1.

limiting accused persons' access to counsel.[41] All those elements constitute an attack against the basic principle of equality of arms, which is among the main components of the right to a fair trial. In combating impunity there should be strict adherence to procedures of law and human rights standards to ensure equality of arms and that further violations are not committed in the interest of pursuing justice.

34. In the exercise of their duty to defend their clients and in the discharge of their professional activities, lawyers are too often identified, by both State and non-State actors, with the interests and activities of their clients.[42] In some serious incidents, lawyers have been killed for being deemed to act against public interests or by those who are afraid of being implicated by evidence that the accused may give.[43] Safeguards should be put in place to protect lawyers from reprisals for conduct related to the discharge of their professional functions.[44] In instances where there are reprisals, lawyers may cease to represent their clients. Indeed, when a State does not take measures to address threats against lawyers, this can be tantamount to violation of the right to defence under international law.

35. If the services provided by lawyers are to be adequate and sufficient, safeguards guaranteeing due process of law have to be adhered to. They include giving counsel adequate time for a substantive, and not simply formal, preparation of the defence; access to confidential information, including intelligence and military reports; freedom to carry out legal work; and appropriate education and training.[45]

E. Victims and members of their families

36. Individuals bear the consequences of impunity through lack of redress, inadequacy of redress and denial of the right to truth and the right to know.[46] International human rights law recognizes that victims and individuals should be in a position to seek redress and obtain remedies.[47] There are a number of factors that hinder victims and members of their families in accessing the court system. They include exorbitant legal costs, lack of legal aid programmes and lack of awareness of legal rights and entitlements. Witnesses may be unwilling to testify because witness protection programmes are lacking or inadequate, or they are reluctant to report cases to the authorities on the assumption that, most probably, no action will be taken. In that respect, the Special Rapporteur believes that robust and effective witness protection programmes should be developed at the national level as an essential tool to guarantee the security of victims and witnesses.

37. The scope of the remedies available to victims and their families for gross violations of international human rights law and serious violations of international humanitarian law includes the victim's rights to equal and effective access to justice, and

[41] Ibid.
[42] A/64/181, para. 12; E/CN.4/1998/39, para. 181.
[43] See A/HRC/14/26/Add.2, sect. IV.B.
[44] Principles 16 and 17 of the Basic Principles on the Role of Lawyers.
[45] Principle 9 of the Basic Principles on the Role of Lawyers; A/HRC/14/26.
[46] E/CN.4/2004/60, para. 37.
[47] Article 2.3 of the International Covenant on Civil and Political Rights.

access to relevant information concerning violations and reparation mechanisms.[48] The enjoyment of those rights is sometimes impeded because victims may be unwilling to engage with the criminal justice system owing to the insensitivity shown by different players in the criminal justice system. The Basic Principles and Guidelines on the Right to a Remedy and Reparation[49] recognize that victims should be treated with humanity and respect for their dignity and human rights and with care to avoid their retraumatization in the course of legal and administrative procedures designed to provide justice and reparation.

38. Under the criminal justice system, since trials are initiated by the State, the role of the victim is usually limited to being a witness. There is limited recognition of the victim as a person with a vested and legitimate interest in the accountability of the judicial process. According to principle 19 of the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, although the decision to prosecute lies primarily within the competence of the State, victims, their families and heirs should be able to institute proceedings, on either an individual or a collective basis, particularly as *parties civiles* or as persons conducting private prosecutions in States whose law of criminal procedure recognizes those procedures. The International Criminal Court has recognized that visits by representatives of the Office of the Prosecutor to countries should include meetings with victims.[50] States should guarantee broad legal standing in the judicial process to any victim and to any person or non-governmental organization having a legitimate interest in cases.[51]

39. It is trite to say that due regard must be given to the sensitive nature of criminal investigations and proceedings. However, victims have a legitimate interest in ensuring that justice is delivered, that the nature of the sentence given by the courts is commensurate with the nature of the crime or offence and that they receive adequate compensation. Victims and their families should, where appropriate, receive information, especially with regard to the status of investigations and the progress of the judicial processes. Where there is discontinuance of investigations or trial, the reasons should be communicated to victims or members of their families.

VI. Cross-cutting issues of the criminal justice system that impact on impunity

Normative framework

40. Impunity cannot be combated in the absence of an enabling normative framework providing accountability for crimes and offences, as well as redress for the victim at the judicial and administrative levels.[52] The inadequacy of legal protection

[48] Principle 11 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

[49] Principle 10.

[50] International Criminal Court, "Prosecutorial Strategy 2009-2012", para. 69.

[51] E/CN.4/2005/102/Add.1, Principle 19; Kampala Declaration adopted by the Review Conference of the Rome Statute of the International Criminal Court (Declaration RC/Decl.1) para. 4; and resolution RC/Res 2, "The Impact of the Rome Statute on victims and affected communities", adopted by the Review Conference.

[52] International Covenant on Civil and Political Rights, article 2 (b).

in regard to human rights violations, including serious violations, has been noted by the Human Rights Committee and by special procedures mandate holders.

41. While all States have ratified at least one of the core human rights treaties and most have codified two or more, domestication of the obligations set out in those treaties often remains a challenge. Some national legal systems fail to provide adequate legal protection in regard to violations of human rights, for example through the non-criminalization of serious crimes and offences. Violations are at times perpetuated because of inadequate legislation, where statutes, codes or administrative acts are lacking or inadequate.[53]

42. States should respond urgently by developing legislation to fill gaps in the provision of legal protection in cases of human rights violations. There is a need to amend constitutions and other legislation, including criminal codes, regulations and rules of criminal procedure, to make them consistent with international law and practice. Inconsistency in sentencing can be confronted by the issuance of sentencing guidelines to promote uniformity as well as proportionality of sentencing, without fettering the discretion of the courts.

43. Judges, lawyers, public defenders and prosecutors may also be obstructed in their role of ensuring accountability by "special" provisions and legislation — which may be at variance with international human rights standards — that States sometimes adopt to face particular situations or difficulties. Legislation adopted during states of exception and emergency, or anti-terrorism legislation, for example, may limit the margin of appreciation of judges to adjudicate, and the scope of operation of lawyers and prosecutors to raise impunity and accountability issues.

Corruption

44. Judicial corruption has been identified as a factor contributing to impunity. Combating corruption is often complex as often there is no prima facie evidence of its existence and it may permeate all institutions in the criminal justice system. Corruption in one part of the judicial system may undermine efforts of the whole system to combat impunity; hence it is important that it be addressed holistically.

45. To counter judicial corruption, concrete measures will have to be adopted, such as the disclosure of personal assets by judicial officials and other persons with significant responsibility in the criminal justice system; control mechanisms at the institutional level to ensure the transparency of operations; the establishment of internal oversight bodies and confidential complaint mechanisms; and the regular and systematic publication of activity reports. Additionally, efforts should be made to improve the salaries of judges, magistrates and judicial staff to reduce susceptibility to corruption.

Threats and intimidation

46. When an environment of fear and intimidation exists it often cripples the criminal justice system, resulting in lack of investigation and prosecution of crimes.[54] In such a scenario, even though an adequate criminal justice system is in place, it is not utilized because of fear of reprisals. It is the responsibility of each State to protect judicial actors from attacks, intimidation, threats, reprisals and retaliation

[53] See article 2.3 (b) of the International Covenant on Civil and Political Rights; see also Human Rights Committee, *Mbenge v. Zaire*, Communication No. 16/1977.

[54] See A/HRC/14/26/Add.2.

actions. There is a need for States to understand the root causes of the attacks, threats and intimidation; to identify the actors who perpetrate such threats; to adequately investigate all the allegations and complaints; and to ensure that there is accountability when complaints are proved. Additionally, adequate measures are needed to protect officers of the criminal justice system and their families, especially in highly sensitive cases, such as those involving terrorism, drug-trafficking, and organized crime offences.

47. Impunity cannot be combated in the absence of efficient witness protection programmes. Important recommendations have been made for the development and implementation of such programmes. For example, the Special Rapporteur on extrajudicial, summary and arbitrary executions has analysed the issue of designing those programmes and making them effective.[55] He noted the need to develop policy tools designed to encourage and facilitate greater attention to witness protection in national-level programmes to combat impunity.[56] The United Nations High Commissioner for Human Rights has recommended the development of common standards and the promotion of best practices that would serve as guidelines to States in protecting witnesses and others concerned with providing cooperation in trials for gross human rights violations and would strengthen the effective provision by the international community of financial, technical and political support necessary to develop programmes at the national level.[57] Further, the High Commissioner has advanced the view that independent witness protection programmes, although funded by the State, should not be under its control. The report of the High Commissioner to truth,[58] which addresses the issue of witness protection within the framework of criminal procedures relating to gross human rights violations or serious violations of international humanitarian law, can provide guidance for the development of witness protection mechanisms.

Capacity-building and training

48. The Special Rapporteur devoted her most recent report to the Human Rights Council (A/HR/14/26) to the need for strengthening continuing education in international human rights law for judges, magistrates, prosecutors, public defenders and lawyers. She noted that there is a considerable gap between the continuing human rights legal education offered to judicial actors and the outcomes obtained with regard to the application of international human rights law in specific cases. Continuing human rights legal education, in particular to impart adequate knowledge of the relevant international standards and jurisprudence, is an essential tool to foster the capacity of judges, prosecutors and lawyers to combat impunity and ensure accountability.

49. The lack of requisite competences and necessary skills of judges and magistrates has an impact on the ability of judges to administer justice effectively. Combating impunity is not only a criminal law issue, but a human rights concern, since fair trial guarantees must be adhered to and the rights of victims protected. Judges must be aware of their role in combating impunity, aware of the international standards and practice which have been developed to combat impunity and aware of

[55] See A/63/313.
[56] Ibid., para. 70.
[57] Ibid., para. 69.
[58] A/HRC/15/33.

the linkages that the national criminal justice system has with international criminal law and human rights law and other accountability mechanisms, such as truth commissions and administrative bodies.

50. The judiciary must ensure that the obligations that a State has undertaken at the international level to combat impunity are implemented. In cases where there is reluctance by a State to initiate criminal proceedings or where laws and decrees are promulgated to exonerate perpetrators from penal responsibility, a proactive judiciary can recommend the repeal or amendment of laws and decrees, or determine inconsistency of laws with international human rights standards.[59] In order to carry out that function, magistrates and judges must have the necessary knowledge of international human rights law to help them in the analysis, interpretation and application of law.

51. Additionally, candidates for prosecutorial positions need to be adequately trained[60] before qualifying as prosecutors and during their careers, not only on procedural and substantive aspects of penal law and proceedings and argumentation before courts, but on international human rights law and standards relating to combating impunity.[61]

VII. Structuring the criminal justice system to combat impunity

52. The Special Rapporteur is aware that every State confronts peculiar challenges with regard to the effectiveness of its criminal justice system in combating impunity. While there is no one-size-fits-all strategy, there are certain guiding principles that can be taken into account in the development of national strategies to combat impunity, not only from the perspective of the criminal justice system but also more generally. The Special Rapporteur encourages States to adopt a human rights-based approach[62] when developing a strategy on impunity. The principles of participation and inclusion; apportioning the roles of duty-bearers and rights-holders; focus on vulnerable groups; legal empowerment; transparency and accountability; and the identification of obligations, should be taken into account.[63]

53. While best practices have emerged from State practice in regard to combating impunity,[64] care should be taken in transplanting strategies that have worked in other jurisdictions without making the relevant adjustments to cater for exigencies prevailing in a particular jurisdiction. Strategies must be multisectoral, holistic and inclusive of all relevant stakeholders, and must guarantee the participation of victims.[65]

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[59] A/HRC/14/26, para. 70.

[60] Guidelines on the Role of Prosecutors, paras. 1-2.

[61] Ibid., para. 11.

[62] A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. Office of the High Commissioner for Human Rights "Frequently asked questions on a human rights-based approach to development programming".

[63] Ibid.

[64] See, for instance, the independent study commissioned by the Secretary-General on best practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of impunity (E/CN.4/2004/88).

[65] See E/CN.4/2005/102; see also General Assembly resolution 63/182.

Concrete, targeted and deliberate steps should be taken to combat impunity in response to the challenges identified.

54. A strategy to combat impunity will have to be devised within the framework of international human rights law obligations. Recommendations from the human rights treaty bodies, including general comments, and from the universal periodic review mechanism of the Human Rights Council, as well as recommendations of the special rapporteurs can serve as important tools for States in developing strategies to combat impunity. Recommendations and outputs from regional human rights mechanisms should also be taken into account.

VIII. Human rights-based approach to reforming the criminal justice system and combating impunity

Conducting a mapping exercise

55. The initial aim is to identify the root and structural causes of impunity in the criminal justice system and related areas, to ensure that the system is responsive to the needs and challenges prevailing on the ground. This can be in the form of a mapping exercise or situational analysis to understand, in a holistic and multidisciplinary manner, the implementation gaps that exist in the normative framework, public policy and practice, and the criminal justice system.[66] When undertaking the analysis attention must be given to, inter alia, the immediate, underlying and structural causes that contribute to impunity; the identification of impunity; patterns the analysis of power relations and dynamics that perpetuate impunity and understanding the linkages and interrelationship among the various variables. Such a systematic analysis should be, both qualitative and quantitative in its approach.

Creation of a database

56. A useful step would be the creation and design of a database to reflect case registration and the ability to monitor case progress from the reporting/registration of the case to delivery of the final judgment. The Special Rapporteur also considers it essential that all judicial actors should have adequate technological support, including through the development and maintenance of websites where jurisprudence can easily be accessed, cases can be tracked and information about proceedings provided.

Awareness-raising and participation

57. Meaningful demand for remedy is facilitated when victims and members of their families have the requisite knowledge of their rights and entitlements under the law. Measures should be adopted to transfer knowledge to individuals on their human rights entitlements and develop their capacities to claim their rights and to pursue cases. As rights-holders, people should be granted an opportunity to participate in any strategy and legislative framework devised to combat impunity.[67]

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[66] Office of the United Nations High Commissioner for Human Rights, "Rule of law tools for post conflict States: mapping the justice sector" (Geneva, 2006).

[67] See E/CN.4/2004/88, para. 11.

When people are empowered with knowledge, they can act as guarantors to promote State accountability in combating impunity.

Coordination

58. The principle of the separation of powers calls for a coordinated and harmonized system to facilitate the discharge of functions by the different branches of the State. This makes it essential that a coordination body or mechanism meet regularly to address challenges and develop strategies for concerted action. The actors involved in the delivery of justice from the executive, legislative and judicial branches have to coordinate their actions on the basis of clear guidelines apportioning roles and responsibilities.

59. Engagement in this process with civil society; national human rights institutions and ombudsmen; bodies such as councils of magistrates; associations of judges; legal aid institutions; women's and equality commissions; bar associations; and organs and bodies such as OHCHR and the United Nations Development Programme should be guaranteed.

Transparency and accountability

60. Human rights principles and standards relating to judges, magistrates, lawyers and prosecutors recognize that they have to be accountable in the discharge of their functions and that disciplinary proceeding can be initiated against them.[68] Such proceedings have to comply with the standards and safeguards provided in the Basic Principles on the Independence of the Judiciary,[69] the Basic Principles on the Role of Lawyers[70] and the Guidelines on the Role of Prosecutors.[71] In addition to the system of checks and balances that may exist at the national level, internal oversight mechanisms should be established to guarantee the accountability of all actors within the criminal justice system, in order to ensure transparency. Mechanisms such as complaint procedures (confidential and public) should be devised and information-sharing and access to information on the activities of the system should be guaranteed. Judicial actors should report periodically on their activities and be accountable for their actions, while respecting, of course, the principles of independence, impartiality, autonomy and non-interference.

Monitoring the delivery of the criminal justice system

61. A strategy for the criminal justice system should include clear benchmarks and be subject to monitoring and evaluation, with measurable indicators. It is important that any strategy be evaluated periodically to measure effectiveness of delivery in combating impunity and monitor current and emerging gaps. The indicators should utilize both quantitative and qualitative information and be devised to monitor short-, medium- and long-term implementation.

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[68] See A/HRC/11/41, paras. 14-84.

[69] Principles 18 and 19.

[70] Principle 26.

[71] Guideline 21.

IX. The criminal justice system vis-à-vis other accountability mechanisms

62. As indicated in the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity,[72] one fundamental element in combating impunity, and of the right to justice, is the inalienable right of victims and their families to the truth, so that they know about the circumstances in which violations took place. In many cases, especially in post-conflict situations, the right to the truth has been implemented by non-judicial bodies — rather than judicial ones — such as commissions of inquiry or truth commissions. Such bodies, when they meet certain criteria and requisites, may also play an important role in combating impunity and ensuring accountability.

63. The Special Rapporteur believes that the work of truth and reconciliation commissions and other commissions of inquiry can be complementary to judicial mechanisms in protecting human rights and combating impunity. For example, Ecuador carried out an important initiative to combat past impunity through the creation of a Truth Commission in May 2007 to investigate human rights violations committed between 1984 and 2008. On 7 June 2010, the Truth Commission published a report based on witness testimony and its own investigations. In Peru, the Commission on the Truth published a detailed document recording the most serious human rights violations and abuses occurred during the internal armed confrontation the country suffered during the 1980s and 1990s. Those reports provided a critically important starting point for addressing impunity for past abuses.

X. Relation between national and international criminal justice to combat impunity

64. The Secretary-General has stated in his report on the rule of law and transitional justice in conflict and post-conflict societies,[73] that domestic justice systems should be the first resort in the pursuit of accountability. While the international community is obliged to act directly for the protection of human rights and human security where conflict has eroded or frustrated the domestic rule of law, no ad hoc, temporary or external measures can replace a functioning national criminal justice system in the long term.

65. There are various examples of countries that have gone through a difficult past and taken steps to investigate and prosecute serious human rights violations. For example, in Argentina, progress has been made towards prosecuting perpetrators of human rights violations committed during the last military dictatorship. Since amnesty laws were repealed in 2003, sentence has been passed on 75 persons, 68 of whom were convicted.[74]

66. It is not always possible to act through the domestic legal system, for various reasons which can include, lack of capacity or political will. This is particularly true

[72] E/CN.4/2005/102/Add.1, principle 2.

[73] S/2004/616, paras. 34 and 40.

[74] Centro de Estudios Legales y Sociales, "Adelanto del Informe 2010 sobre la situación de los derechos humanos en Argentina" (2010).

in transitional justice situations. In those situations, States have the primary responsibility to exercise jurisdiction to investigate crimes, including serious violations of international humanitarian law and gross violations of international human rights law, and bring the perpetrators to justice, assuring fair trial standards and guarantees. Often in such situations there is a need to develop, rebuild or reinforce investigative and prosecutorial capacities at the national level, strengthening the independence and the effectiveness of the judiciary, and establishing an adequate public defence system, and witnesses, and victims' protection and support programmes. Not infrequently there is a need to reform the normative framework as well.

67. In some cases, forms of international cooperation with domestic trials can be a solution, including, for instance, forensic assistance in the investigative phase. The United Nations has made concerted efforts to combat impunity in Guatemala through the International Commission against Impunity in Guatemala. That Commission was established in 2007 with the multidimensional mandate to assist Guatemalan authorities in identifying and dismantling criminal networks that have fostered organized crime and impunity. The Commission carries out investigations and takes part in criminal proceedings, together with the national authorities, following Guatemalan law and procedure. It proposes public policies to strengthen the justice system and assists in the implementation of technical assistance programmes.

68. In other situations, where accountability at the national level is not possible at all because the State is unable or unwilling to conduct effective investigation and prosecution, international criminal justice mechanisms, including international or mixed or hybrid tribunals, may come into play, exercising complementary[75] or supplementary[76] jurisdiction.

69. The Special Rapporteur believes that domestic efforts to combat impunity may be significantly enhanced by States' acceptance and implementation of human rights treaties and their acceptance of optional complaint procedures. The capacity of States to ensure justice for crimes committed in their own territory has been enhanced by the emergence of an increasingly effective international and transnational architecture of justice.

Application of the universal jurisdiction to fill the impunity gap

70. Universal jurisdiction is a critical component in combating impunity. Universal jurisdiction is the ability and competence of the courts of any State to try persons for human rights violations and serious crimes committed outside its territory which are not linked to the State by the nationality of the suspect or that of the victims or by harm to the State's own national interests.[77] The essential role of

[75] As in the case of the International Criminal Court.

[76] This is the case, for instance with the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

[77] The International Law Commission has adopted an identical approach in its working definition of universal jurisdiction. Preliminary report on the obligation to extradite or prosecute ("*aut dedere aut judicare*"), by Zdzislaw Galicki, Special Rapporteur of the International Law Commission (A/CN.4/571), para. 19. In addition, the same definition is followed in International Bar Association, *Report of the Task Force on Extraterritorial Jurisdiction*, 2009, p.151. Available from www.ibanet.org.

universal jurisdiction in enforcing international criminal law was recognized six decades ago when the drafters of the 1949 Geneva Conventions required each State party to those treaties to investigate and bring to justice in its courts those responsible for grave breaches of those treaties.

71. International law permits States to exercise universal jurisdiction over (i) crimes under national law of international concern, such as hijacking, hostage taking and terrorist bombing, and (ii) crimes under international law, such as genocide, crimes against humanity, war crimes, extrajudicial executions, forced disappearance and torture. It is increasingly recognized that States not only have the power to exercise universal jurisdiction over those crimes, but also have the duty to do so or to extradite suspects to States willing to exercise jurisdiction. For example, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, requires States parties, to bring to justice in their own courts persons suspected of torture when they are found in their territories or to extradite them to a State able and willing to bring them to justice.[78]

72. In 2009, in their general observations in the Sixth Committee of the General Assembly, most Member States affirmed that the principle of universal jurisdiction was enshrined in international law and constituted an important tool in fighting impunity for serious international crimes.[79]

73. More than 125 States have included the principle of universal criminal jurisdiction in their legislation.[80] A number of States have enacted legislation providing for universal jurisdiction over certain crimes under international law. They include Austria, Belgium, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Denmark, Ecuador, El Salvador, France, Germany, Guatemala, Honduras, Mexico, Nicaragua, Norway, Panama, Peru, Spain, Switzerland, Uruguay and Venezuela. Few of the States that have enacted such legislation have ever exercised universal jurisdiction.[81]

74. Since the establishment of the International Criminal Tribunals for the former Yugoslavia and for Rwanda, States have enacted legislation permitting their courts to exercise universal jurisdiction over grave crimes under international law and to exercise such jurisdiction. Courts in Austria, Denmark, Germany, the Netherlands, Sweden and Switzerland have exercised universal jurisdiction over grave crimes under international law committed in the former Yugoslavia. Courts in Belgium, France and Switzerland have opened criminal investigations or begun prosecutions related to genocide, crimes against humanity or war crimes committed in 1994 in Rwanda, in response to Security Council resolution 978 (1995) in which the Council urged "States to arrest and detain, in accordance with their national law and relevant standards of international law, pending prosecution by the International Tribunal for Rwanda or by the appropriate national authorities, persons found within their territory against whom there is sufficient evidence that they were responsible for acts within the jurisdiction of the International Tribunal for Rwanda". Italy and

[78] Article 7.

[79] See www.un.org/ga/sixth/64/UnivJur.shtml. Subsequently, the General Assembly adopted resolution 64/117 on the scope and application of the principle of universal jurisdiction.

[80] Amnesty International, AI Index: IOR 53/008/2007; see also AI Index: IOR 53/002/2001.

[81] Amnesty International, study of state practice of universal jurisdiction at the international and national level.

Switzerland have initiated criminal investigations of torture, extrajudicial executions and forced disappearances in Argentina in the 1970s and 1980s.

75. In 2005, Hissène Habré, the former President of Chad, was indicted by a Belgian court of crimes against humanity, war crimes and torture. The Senegalese authorities arrested Habré in 2005, and in 2006, in response to a request by the African Union, Senegal agreed to prosecute him. Senegal subsequently amended its laws to remove any legal obstacles to Habré's trial. In September 2008, 14 victims filed complaints with a Senegalese prosecutor, accusing Habré of crimes against humanity and torture. In 2005, an Afghan warlord was convicted in the United Kingdom of Great Britain and Northern Ireland for conspiring to take hostages and conspiring to torture during the 1990s in Afghanistan. In 2009, Finland exercised universal jurisdiction in the trial of François Bazaramba, a Rwandan national residing in Finland, accused of participating in the genocide which took place in Rwanda in 1994.

Recent developments in international criminal law

76. The Special Rapporteur follows developments in international justice closely in order to support efforts to strengthen the rules and procedures of the international judicial institutions. She recently reported to the Human Rights Council on current developments.[82] The establishment of international criminal tribunals, and notably the International Criminal Court, represents a historic achievement in combating impunity for international crimes and a milestone development in international criminal justice. As the International Criminal Court operates on the basis of the principle of complementarity, States parties to the Rome Statute are bound to bring their legislation into compliance with the provisions of the Statute.

77. The Special Rapporteur commends States parties that have reviewed and amended their national legislation to bring it into line with the provisions of the Rome Statute of the International Criminal Court. Thirty-three States parties have enacted both complementarity and cooperation legislation, 11 States have enacted cooperation legislation, 12 States have enacted complementarity legislation and 55 States have yet to enact either form of legislation.[83] The Special Rapporteur commends those States that have enacted legislation and encourages others to follow suit.[84] The Special Rapporteur also encourages Member States to become parties to the Statute.

XI. Conclusions

78. The Special Rapporteur believes that there is an urgent need for all States to establish, strengthen and develop a strong judiciary, composed of independent and impartial judges and magistrates, as a fundamental tool for combating impunity.

79. A human rights violation that goes unpunished is the source of the commission of other crimes or violations. Impunity undermines democracy and people's trust in

[82] A/HRC/14/26, paras. 81-90.

[83] Amnesty International, "*International Criminal Court: Rome Statute Implementation Report Card. Part One* (Amnesty International Publications, 2010).

[84] See Kampala Declaration (Declaration RC/Decl.1), para. 7 and resolution RC/RES.1 on complementarity, paras. 2 and 4.

State institutions. In a State governed by the rule of law, the State's commitment is of vital importance in fighting impunity. Its democratic institutions should act on behalf of the people and represent their interests and aspirations, giving a clear profile to the State's policies. When the commitment of those institutions is expressed in a clear, more transparent, defined and consolidated manner the State's policies will be oriented towards combating impunity. When States combat impunity, human dignity will be preserved. The degree of engagement of the State in combating impunity is also a demonstration of its interest in and commitment to guaranteeing the full enjoyment of all human rights to all its citizens.

XII. Recommendations

Broad strategies

80. Impunity affects democracy, the rule of law and the enjoyment of human rights in a radical way. Therefore, each State should consider the degree of impunity in the society as an indicator of its commitment to the fight against impunity, the health of its democracy and the state of the rule of law; it could also be an indicator of the independence of its judiciary. It seems necessary, to combat impunity, that States should consider reviewing their legal framework, analysing the results of current policies and, where required, undertake relevant reforms. It is necessary in each case to prioritize the identification of perpetrators of human rights violations and abuses, crimes against humanity; war crimes; and serious organized crime, particularly that committed by terrorists and mafia elements.

81. States should adopt a human rights-based approach to combating impunity through the criminal justice system. In that respect, the following principles should be taken into account: participation and inclusion, apportioning the roles of duty-bearers and rights-holders, focus on vulnerable groups, legal empowerment, transparency and accountability and the identification of obligations.

82. States should conduct a mapping exercise to identify the root and structural causes of impunity; create and design national databases for case tracking; ensure coordination of the different institutions of the criminal justice system; provide accountability and transparent mechanisms; and develop monitoring strategies.

Criminal justice system

83. The de facto and de jure independence of the judiciary, public defenders and lawyers should be fully respected and measures should be taken to guarantee such independence, in accordance with the major human rights instruments including the International Covenant on Civil and Political Rights, the Basic Principles on the Independence of the Judiciary, the Basic Principles, on the role of Lawyers and the Guidelines on the Role of Prosecutors.

84. Structural and operational reform should be undertaken to address deficiencies in the judiciary, in the prosecution and at the police level, particularly considering deficiencies in the investigative stage, the adjudication of cases and the execution of sentences.

85. States must ensure that their domestic criminal justice system is accessible by citizens and has adequate human, financial and material resources for its operations.

86. Where impunity is prevalent, special mechanisms should be established to ensure compliance with judicial decisions. They should also supervise the granting of reparation, economic compensation or moral satisfaction to the victims within an adequate time.

87. States should take measures to address exorbitant legal costs, lack of legal aid programmes and lack of awareness on the part of the population of their rights and legal entitlements, and to ensure that the criminal justice process is sensitive to the concerns of victims.

88. The development of effective and efficient witness protection programmes and the adoption of security measures should be considered. Judges, prosecutors, lawyers, staff officers, witnesses and victims and members of their families should be safeguarded from threats and intimidation. States should investigate any complaints in that regard and prosecute those found responsible for such acts.

89. Where discretionary powers are granted to prosecutors to discontinue cases, the reasons should be given to victims and members of their families. Clear guidelines should be developed defining the grounds on which cases may be discontinued.

90. Accountability and oversight mechanisms should be developed and measures should be adopted to address corruption, including provision of internal oversight mechanisms, declaration of assets, establishment of confidential complaint mechanisms and improving salaries.

91. States should ensure the provision of adequate training and capacity-building for criminal justice personnel on their role in combating impunity.

International obligations

92. Those States that have not ratified all the core human rights instruments and optional provisions in treaties giving competence to the United Nations treaty bodies to consider communications from individuals, should consider doing so as a measure of furthering State accountability in combating impunity. For the same reason, the Special Rapporteur recommends that Member States that have not yet done so become parties to the Rome Statute of the International Criminal Court.

93. States should urgently develop legislation to provide for legal protection in cases of gross human rights violations, and amend their national legislation to be consistent with international law and practice.

94. States should fully cooperate with the international criminal courts and tribunals, respecting and applying their decisions, including those issued by their prosecutors, and making effective their arrest warrants.

International community

95. The United Nations and particularly the Office of the United Nations High Commissioner for Human Rights, as well as the international community, should continue to provide both substantive and technical support to assist Member States in combating impunity, including, where appropriate and necessary, through international or mixed or hybrid tribunals. Those tribunals, in confronting impunity, should constitute a model and an example in regard to respect of the judicial guarantees for detainees and their right to due process.